INDEX

CASES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1924

INDUSTRIAL ASSOCIATION OF SAN FRANCISCO ET AL.
v.
UNITED STATES OF AMERICA

No. 365

BRIEF ON BEHALF OF THE UNITED STATES

STATEMENT OF CASE

[Italics in quotations are ours, if not otherwise stated.]

This is an action brought by the United States against the Industrial Association of San Francisco and others to enjoin the further execution of a conspiracy in restraint of interstate and foreign commerce in violation of the Sherman Anti-trust Act. The original bill was filed on May 26, 1923. (pp. 1–7.) A memorandum opinion by M. T. Dooling, district judge for the Northern District of California, was filed November 9, 1923. (pp. 34–37.) A final decree was entered by the District Court in favor of the Government December 19, 1923 (pp. 37–38), finding that the defendants were guilty of a conspiracy in restraint of interstate and foreign commerce (p. 38). The defendants were perpetually enjoined from engaging in the prac-

tices specifically mentioned in the decree, and jurisdiction of the District Court was retained for complainant to apply for further relief in the event that the defendants do not comply in good faith with the decree. The cause comes into this court upon appeal by defendants, who request that the decree of the District Court be reversed.

NOTE.—References to printed pages of the record are indicated thus, (p. —).

PLEADINGS

The defendants mentioned in the bill were the Industrial Association of San Francisco, California Industrial Council, Industrial Association of Santa Clara County, Builders Exchange of San Francisco, Builders Exchange of San Jose, Master Plumbers Association, and numerous corporations and individuals engaged in the transportation, distribution, and sale of building materials.

The defendant, Industrial Association of San Francisco, is described in the answer (p. 12) as a voluntary, unincorporated association of a large number of persons and firms residing in or doing business in the city and county of San Francisco, and was organized November 8, 1921. The members were from all walks of commercial and professional industry, including building, machine work, shipping, banking, lawyers, doctors, dentists, and storekeepers. (p. 13.) It is also alleged in the answer (p. 19) that the—

> sole purpose of the organization of the Industrial Association, and the sole purpose

> and the extent to which it is cooperating with the Builders Exchange of San Francisco or any of the other defendants, is for the purpose of maintaining an *open shop industrial condition* in the city of San Francisco.

The Builders Exchange of San Francisco was alleged in the answer to be a corporation organized under the laws of the State of California. (p. 19.) It maintained a system or bureau by means of which all members of said Builders Exchange might be informed as to the manner in which different contractors and sub-contractors were operating their business, whether the same was a " closed " or " open " shop, and that in connection therewith permits were issued to all persons operating on an " open-shop " basis (p. 24).

Master Plumbers Association of San Francisco is described in the answer (p. 23) as a voluntary corporation, organized under the laws of the State of California for similar purposes to those of the Builders Exchange.

The defendants are alleged to have engaged in a conspiracy to restrain trade and commerce among the several States in building materials in violation of the Act of Congress approved July 2, 1890 (26 Stat. 209). It is alleged that the defendants agreed to use and did use the following means and methods in furtherance of said conspiracy (pp. 3, 4):

> (1) Agreeing to refuse and refusing to sell, and refusing to permit others to sell to purchasers, prospective or otherwise, said

building materials unless they agree (*a*) to employ a foreman and at least fifty per cent of the laborers, skilled and unskilled, on buildings which they desired to erect, who were not in any way affiliated with, connected with, or members of any labor union so called, (*b*) to assent to carry out, and carry out, and be bound by this "American Plan" so called, as hereinbefore next set forth.

(2) Collusively bidding and refraining from bidding against each other for the furnishing of said building materials, for, or for the erection of, any building or buildings and parts thereof for the purpose of enhancing the price thereof and to prevent competitors from obtaining the contract therefor.

(3) Agreeing to determine and determining, arbitrarily, the persons, corporations and others who shall engage in the furnishing of building materials and in the construction of buildings or parts thereof.

(4) Coercing, intimidating, and preventing, by threats and otherwise, others from engaging as competitors in the business of constructing buildings and parts thereof, and from furnishing building materials therefor.

(5) Agreeing among themselves that no person or corporation, except members of the Builders' Exchange or the Industrial Association, shall engage in the business of erecting buildings or parts thereof or of supplying building materials therefor and

using and causing others to use threats and intimidation to keep competitors, potential or otherwise, from engaging in said business.

(6) Agreeing upon and fixing arbitrarily the wages of foremen, workmen, and laborers, skilled or otherwise, employed in or about buildings or parts thereof to enhance their profit or profits on any particular job or jobs.

(7) Agreeing to and fixing, arbitrarily, the person or persons who shall be employed as foremen, laborers and workmen, skilled or unskilled, in and about the construction of any buildings or parts thereof.

(8) Agreeing to distribute and distributing secretly among themselves and to others employed in the same or a similar business as themselves "green lists" so called, commonly known as "black lists" containing the names of persons, firms, and corporations who have rightfully refused to join in said conspiracy and to become members of said associations, and to agree and abide by the by-laws, rules, resolutions, and regulations thereof, or to be coerced into doing so by threats, fines, or otherwise.

(9) Coercing others from resorting to redress through the courts of this state or of the United States, by threats of fighting and delaying for long periods any suit or suits which might be brought against them by such persons to secure such redress, although well knowing that such persons had a lawful right to win such suits and to secure adequate and speedy redress in such way.

(10) Agreeing with banks, trust companies and other monied corporations and concerns to coerce, intimidate, and compel builders and others, competitors of said defendants, to join in said conspiracy and to become members of said associations and to agree to and abide by the by-laws, rules, resolutions and regulations thereof, by refusing or threatening to refuse loans to such persons necessary to start, continue, or complete their building operations and by calling in, or threatening to call in, at inopportune or unnecessary times loans already made by them on such building operations.

(11) Discriminating and causing others to discriminate against laborers and workmen, skilled or unskilled, engaged or to be engaged in and about building operations because such laborers and workmen were affiliated and connected with and members of any labor union so called.

(12) Agreeing to form and forming said Industrial Association of San Francisco and said Builders' Exchange of San Francisco with headquarters in the city of San Francisco aforesaid.

(13) Agreeing to be bound by, and being bound by, and carrying out the by-laws, rules, resolutions and regulations of said Industrial Association and said Builders' Exchange.

It is further alleged that the defendants have carried out the agreements and performed the acts above set forth and are continuing and will con-

tinue so to do and have restrained and are continuing to restrain a large and important part of the interstate trade and commerce described.

Other admissions in answers

In March, 1922, about ninety per cent of the mechanics working in the plumbing business in San Francisco were union men, but mingled with them were about ten per cent of non-union men (p. 16). In March, 1922, about ninety per cent of all the employers continued working on the American Plan. About April or May, 1921, some material houses, including some of the defendants, refused to sell to the unions materials to be used on " closed-shop " union work in the city of San Francisco (p. 17). It is alleged that permits were issued to all persons operating on the " open-shop " basis; that said permit system was operated by said Builders' Exchange in the city and county of San Francisco for the benefit and information of members and others residing in the city and county of San Francisco; that said permit system is operated by said Builders' Exchange for the purpose of making effective its rule and regulation in support of the " open-shop " plan of doing building work; that under the rules and regulations of said Builders' Exchange its members were required to operate upon the " open-shop " plan; and as a means or method of making effective said " open-shop " plan in San Francisco, said Exchange issued certificates or permits to persons doing building

work in San Francisco, thus enabling the members of the Builders' Exchange of San Francisco to know before making any contracts with such persons whether or not they were operating upon the "open-shop" plan (p. 24).

Injunctive relief awarded by final decree

The defendants and each of them and their members, officers, agents, servants and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, were perpetually enjoined, restrained, and prohibited directly and indirectly, individually and collectively, from—

(*a*) Requiring any permit for the purchase, sale, or use of building materials or supplies produced without the State of California and coming into said State of California in interstate or foreign commerce.

(*b*) Making as a condition for the issuance of any permit for the purchase, sale, or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California.

(*c*) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California.

(d) Aiding, abetting, or assisting, directly or indirectly, individually or collectively,

> others to do any or all of the matters or things herein set forth (p. 38).

It was also provided (p. 38):

> That jurisdiction of this Court be and is hereby retained by the Court, and, in the event that defendants do not comply in good faith with this decree, complainant is accorded the right upon a proper showing to apply for further relief at the foot hereof.

THE PROOF

A. The combination and its purpose

In the joint answer of the Industrial Association of San Francisco, the Builders Exchange of San Francisco, the Master Plumbers Association, and others, it is stated that the sole purpose of the organization of the Industrial Association and the sole purpose and extent to which it is cooperating with the Builders Exchange of San Francisco, or any of the other defendants, is for the purpose of maintaining an American Plan industrial condition in the city of San Francisco (p. 19); that prior to February 1, 1921, the building trades industry in the city and county of San Francisco was on what is termed the "closed-shop" basis, and every workman in the building trades industry, excepting about one per cent, was a member of some building trades-union (p. 14).

The American Plan, as originally outlined, required a non-union foreman on every job (p. 136).

During the year 1921 it was the aim of defendants to have the proportion of non-union men in each craft approximately 50 per cent. (Letter of October 5, 1921, p. 123, Exhibit 8, p. 112.)

A resolution requiring the employment of a non-union foreman and at least 50 per cent non-union mechanics and laborers was passed by the Central Council of the Builders Exchange about the middle of the year 1921 (p. 395). It is claimed that the board of directors neither approved, ratified, or confirmed this resolution. The "open-shop" policy was duly and regularly made the active policy of the Builders Exchange by resolution regularly adopted in June, 1921, and each and all the members of the Builders Exchange pledged themselves to observe said "open-shop" rules (p. 453).

A. Knowles was ordered to discharge union plasterers working for him who would not abide by the American Plan (p. 321). F. H. Maynard told John Coefield that Grinnell Company of the Pacific would continue to refuse to sell any supplies whatsoever to any person more than one-half of whose employees were members of labor unions or whose foreman was a member of a labor union (p. 58). Frank McDonald testified that among the rules adopted by the Industrial Relations Committee was one that no permit should be granted to any person who employs a labor union foreman or more than one-half of whose employees are members of labor

unions (p. 84). The defendants claim that this practice was later modified.

The value of the building work done in the city and county of San Francisco during the year 1922, as shown by building permits, exceeded $45,000,000, and for the first nine months of 1923 exceeded $34,000,000 (p. 432).

Paul Eliel, a member of the staff of the Industrial Association, sent to the plumbers' supply houses lists giving the names of contracting plumbers in San Francisco not operating under the American Plan (p. 154, Exhibit 19). He testified:

> " there was a cooperative relationship between the two organizations "

referring to the Builders Exchange and the Industrial Association (p. 159).

The Builders Exchange, incorporated July 5, 1890, had an official publication, in an issue of which, under date of April 15, 1922 (p. 113), is found the following statements:

> Resolved, that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award for the year 1922, of the Impartial Wage Board, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all

crafts in the city and county of San Francisco for the balance of the year 1922.

ONLY ONE THING TO BE DONE

Every member of the Exchange must stand firmly behind the machinery created by the Exchange to meet the strike situation which confronts us. According to the newspapers, the unions are not striking for more wages or for better hours, but in protest against the American Plan. The public generally, and the Builders' Exchange in particular, feel that the action on the part of the Labor Council to force this issue on the eve of the biggest building *area* since the big fire is unwarranted, and, therefore, every member of the Exchange should stand as one man and see this fight through to the finish. The permit system has gone into effect, with the approval of the building material interests, and no one need apply for a permit unless he is running a strictly American Plan job and agrees to pay the wage scale as adopted by the Builders' Exchange. The permit office has opened, equipped with a full crew sufficient to care for all applicants without delay. A crew of inspectors will begin operations immediately. Every member is counseled not to start any job until he is sure the job is started right.

The above quoted resolution was adopted without dissent at a special meeting of the Council of

the Builders' Exchange, held on April 12, 1922 (p. 113).

A mimeographed letter containing this resolution was sent to all members of the Builders' Exchange, dated April 13, 1922 (p. 111).

To show the extent of the conspiracy we quote from the same number of the official publication (p. 114):

> The Board of Directors appointed C. W. Gompertz as a delegate to represent the Exchange at a great Western conference of building interests now in session at Salt Lake City. *If the open shop is to be a complete success it is absolutely necessary that it be universally adopted. An open-shop policy in one city and a closed-shop policy in an adjoining city tends to demoralize building conditions in both places. It is the purpose of this conference to launch plans that will make for uniformity.*

The issue of the same official organ, dated April 29, 1922 (Exhibit 14, p. 125), gives a clearer statement of the scope of the plan (pp. 130, 131).

> The American Plan is spreading rapidly in Buffalo. The latest convert is the Master Plumbers' Association. * * * An American Plan magazine is in immediate prospect through the initiative of the Associated Building Employers of Detroit, an organization comprising some 525 concerns employing about 7,000 men. * * * American Plan for lathers has been established in Syracuse, N. Y.

From the same issue we quote the following (p. 125):

> The President's Corner. April 29, 1922: The Industrial Relations Committee at its meeting on Thursday evening, April 27th, passed unanimously a resolution authorized by the resolution of the Central Council dated April 12, 1922, to the effect that *all members of the San Francisco Builders' Exchange operating outside of the City* and County of San Francisco must comply with the American Plan and the Builders' Exchange wage scale the same as they do in San Francisco.
>
> Members will please take notice.
>
> The bricklaying situation is well in hand. Many of our members are proceeding with their work under the American Plan, and it is hoped that in the near future the entire craft will be at work.
>
> The plastering situation is proceeding favorably. A number of American Plan jobs are running, and the indications are that the Master Plumbers will shortly accept the situation, and like all other loyal members of the Builders' Exchange, operate on the American Plan.
>
> The plumbing situation, as far as the members of our Exchange is concerned, is gaining strength every day. Many plumbers are arriving, and it is expected that the plumbing business will be running on a normal basis, American Plan, within the next few days.—Builders' Exchange of San Fran-

cisco; W. H. George, president and chairman, Industrial Relations Committee.

We quote the following extract (p. 126) from the same issue:

VIRTUE HAS ITS OWN REWARD

George Wagner, general contractor, has just completed a million dollar project in Palo Alto at less than the guaranteed cost. and in appreciation of his services he has been handed a new job of $600,000.

Mr. Wagner did all this work on a strictly non-union basis, as Palo Alto is in the jurisdiction of the San Jose B. T. C., and no union men were allowed to work on his job. Thus proving that large building projects can be undertaken and completed with non-union men at less cost than with union men.

The Industrial Association of San Francisco was organized November 8, 1921 (p 242). Its cooperation with the Builders Exchange is shown by Exhibit No. 18 (pp. 140–141), a letter on the stationery of the Industrial Association of San Francisco, dated July 1, 1922, was addressed to the Builders Exchange, from which we quote the following:

We hand you, herewith, list of jobs operating, in accordance with Mr. George's letter to you of June 29, copy of which was forwarded to Mr. Gross.

W. H. George was president of the Builders' Exchange. Under date of June 29, 1922, he wrote the following letter (p. 142):

The Builders' Exchange, Incorporated July 5, 1890, 180-188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 29, 1922.*

L. E. CRAWFORD, Esq.,

Builders' Exchange, 180 Jessie Street, San Francisco, Calif.

DEAR SIR: Please discontinue issuing any permits to E. A. Johnson until he disposes of Mullin, the plumber.

Please discontinue issuing permits to Thos. Hamill until he disposes of plumbers Kohler and May.

Please discontinue issuing permits to Nelson Bros., Westwood Park, until they dispose of plumber Madden.

Issue no permits to A. C. Hammerton until he disposes of Gus May.

As heretofore instructed hold up all permits on jobs where Sugarman is the plumber.

Mr. Goss will file with you at once an amended list of any new jobs not started on which the contractors and owners have let the plumbing to any of the bad plumbers. Issue no permits to ever start these jobs. He will keep this list amended from day to day as new jobs are let.

As heretofore hold up all special jobs when requested to by Mr. Goss, letting me know at once what the jobs are. As a starter.

Peterson, Geary & Shannon, Beck Apartments, Power near Bush.

Galligo School to be handled as previously instructed.

Please call to my attention any other jobs that should be added to this list which you take from your present records.

Yours very truly,

BUILDERS' EXCHANGE
OF SAN FRANCISCO.

(Signed) W. H. GEORGE,
President and Chairman
Industrial Relations Committee.

WHB–b.
CC. Mr. Moss.

Similar communications were sent by the Secretary of the Industrial Association to the secretary of the Builders Exchange (pp. 142–150).

These letters of the association were addressed to Mr. Crawford (secretary, p. 110) to call his attention as an employee of the Builders Exchange to those specific jobs on which the plumbing was not being done on the American Plan (pp. 150, 151).

William P. Goss was president of the Master Plumbers Association. He telephoned Crawford on several occasions calling attention to cases where plumbers had let contracts to building contractors who were not operating on the American Plan. Crawford, pursuant to instructions, held up specific jobs when requested to do so by Mr. Goss (p. 151). The campaign to put the American Plan into effect started on the 11th day of June, 1921, when the

Central Council passed a resolution as follows (pp. 103, 104):

> Resolved by the Central Council of the Builders' Exchange, all of the thirty-five crafts more or less affiliated with the said Exchange being present and participating, that preferences in deliveries of building materials within the county of San Francisco be made to those contractors abiding by the rules, regulations and decisions of the Central Council of the Builders Exchange; and that the Central Council of the Builders Exchange take all necessary steps to keep the various crafts advised of the names of those persons and firms strictly observing its rules, regulations, and decisions.

Another resolution was passed June 13, 1921, as follows (p. 104):

> It was regularly moved and seconded and unanimously carried by a standing vote, that the following resolution be adopted:
>
> Resolved, that the Builders Exchange, through the Central Council, go on record as endorsing the actions of the Conference Committee and the Advisory Board in every particular in their efforts which have resulted in work starting June 13th, with endorsed wage scale and American Plan in effect.

The action of the Central Council was confirmed by the Board of Directors of the Builders Exchange June 14, 1921 (p. 103).

The Board of Directors of the Master Plumbers Association passed a resolution July 19, 1921, giving its full support to the policy set forth by the Builders Exchange known as the American Plan (p. 105). However, at the meeting of the Central Council of the Builders Exchange, held April 12, 1922, at which W. H. George, president of the Builders Exchange, presided, an aggressive campaign was outlined to force all contractors connected with the building industry in the City and County of San Francisco to adopt the American Plan (pp. 113–114).

B. Means adopted by defendants to restrain trade

Having adopted a policy to control the building industry in San Francisco, the defendants proceeded to force everyone connected, directly or indirectly, with that industry to conform to the American plan. It was agreed by and between the defendants that no building material would be furnished any owner, contractor, or sub-contractor unless he agrees to adopt the American Plan and to cooperate in the general conspiracy to prevent any building from being erected or any repairing job being done unless in strict accordance with the dictates of the combination. When it is remembered that the building operations in San Francisco during 1922 amounted to $45,000,000 and that ninety-nine per cent of the workmen engaged in the building industry were members of some building

trades-union (p. 14) and that it was the purpose of the defendants to make "the American Plan one hundred per cent successful" (p. 106), it is easy to understand that force was employed to accomplish the object of the conspiracy. The means of compelling compliance with the purposes of the combination and to prevent any contractor or builder from getting materials were as follows:

1. The establishment of the permit system.
2. Pledges from contractors to run all jobs on the American Plan.
3. Warnings that permits would be refused if the contractor failed to run jobs on the American Plan.
4. Inspectors visited each job and made daily reports as to the number of union and non-union men employed on each job.
5. A grievance committee was appointed and members were tried, fined, or expelled for selling to persons not operating on the American Plan.
6. Lists were distributed of jobbers who were not operating under the American Plan similar to "black lists."
7. Letters to owners.
8. Compelling breach of contracts.
9. Cooperation with large manufacturers outside the State of California and their agents within the State.

1. The permit system

The machinery for carrying into effect the plan of the defendants to prevent any contractor not

working on the American Plan from getting any materials was placed in the hands of the Industrial Relations Committee of the Builders Exchange, of which W. H. George, president of the Exchange, was chairman. L. E. Crawford was made secretary of this committee (p. 109). He commenced work on April 13, 1922. The expense of the work, which was great, was defrayed by the Industrial Association of San Francisco (p. 152).

A permit bureau was established by the Industrial Relations Committee on or about April 12, 1922 (p. 137). The permit office opened equipped with a full crew sufficient to care for all applicants without delay (p. 113). In the issue of the official publication, April 15, 1922, it was stated (p. 113):

> The permit system has gone into effect, with the approval of the building materials interests, and no one need apply for a permit unless he is running a strictly American Plan job and agrees to pay the wage scale as adopted by the Builders' Exchange.

On April 13, 1922, a letter was addressed to all members of the Builders Exchange, stating (p. 114):

> The permit system is again at work so far as cement, lime, ready-mixed mortar, plaster, red brick, fire and face brick, terra cotta, clay products, and rock, sand and gravel is concerned. All members of the Builders' Exchange in applying for permits must have in mind that they are required to strictly

carry out the American Plan and to pay the Builders' Exchange wage scale.

* * * * *

Don't ask for a permit unless you intend to comply.

Any person receiving a permit and not complying need not apply for any more permits.

The actual form of the permit was as follows (Exhibit No. 12, p. 123):

Date, July 5, 1922. No. 11693. Release for building materials. Name, McDonald & Kahn. Location of job, cor. Sacramento & Power. Materials, 1 c/l—(evidently meaning 1 carload)—grey cement. Builders' Exchange, by ———, Chairman Strike Committee.

Copies of such permits were issued by L. E. Crawford, secretary of the Industrial Relations Committee of the Builders' Exchange. Permits for the release of building material were also issued consecutively. A new series was inaugurated April 23, 1922, since which time approximately 28,000 permits have been issued. Prior to that time, six to eight thousand had been issued (p. 124). The permit system may be better understood by an examination of the following exhibits:

The Builders' Exchange, Incorporated July 5, 1890, 180–188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *April 12, 1922.*

At a regularly called meeting of the Central Council of the Builders' Exchange held

this 12th day of April, 1922, a quorum being present, the following resolution was made, seconded and carried: "At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the city and county of San Francisco for the balance of the year 1922."

The Industrial Relations Committee of the Builders' Exchange begs to advise you that in order to carry out fully the terms of the resolution it will immediately be necessary to install the permit system so far as cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand, rock and gravel are concerned.

Therefore, the permit system will operate for the above materials effective 8 a. m. Thursday, April 13, 1922. Will you kindly be governed accordingly.

If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to *all other materials used in the building trades.*

Your whole-hearted cooperation is necessary, will be appreciated, and will soon end the present controversy.

Yours very truly,

BUILDERS' EXCHANGE OF
SAN FRANCISCO,
By COMMITTEE ON INDUSTRIAL
RELATIONS,
W. H. GEORGE, *Chairman.*

(p. 137.)

The Builders' Exchange, Incorporated July 5, 1890, 180–188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *April 26, 1922.*

Referring to our letter of April 12th, ordering in the permit system so far as cement, lime, plaster, ready-mixed mortar, common brick, fire and face brick, terra cotta and all clay products, also sand, rock and gravel are concerned. Please carefully adhere to the following three points:

1. The permit system applies not only to consumers but also to dealers. No department or class of deliveries is excepted. The permit system is to cover all deliveries.

The words " consumers," " dealers," and " all " are underscored.

2. Permits must (underscored) be on file with all dealers and manufacturers for all materials released.

3. All released materials must be delivered to the places called for by the permit.

4. The permit system is hereby extended to take in all deliveries in San Mateo and Santa Clara Counties.

Yours very truly,

BUILDERS' EXCHANGE OF
SAN FRANCISCO,
By INDUSTRIAL RELATIONS COMMITTEE,
W. H. GEORGE, *Chairman.*

(pp. 137–138.)

The Builders' Exchange, Incorporated July 5, 1890, 180–188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 7, 1922.*

An impression seems to be prevalent in some quarters that certain jobs have blanket permits or that it is permissible to deliver to them because they are supposedly American Plan jobs throughout.

Please be advised that this is not so. Everybody is treated alike and there are no special privileges. Be sure you have on hand a permit for every delivery or carload shipment.

Yours very truly,

BUILDERS' EXCHANGE OF SAN FRANCISCO.
W. H. GEORGE,
President and Chairman Industrial Relations Committee.

(p. 138.)

The Builders' Exchange, Incorporated July 5, 1890, 180–188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 21, 1922.*

Effective at once, wall board, button lath, Keene cement, and all plater products are

added to the list of goods to be permitted in San Francisco, San Mateo, and Santa Clara Counties.

Yours very truly,

BUILDERS' EXCHANGE OF SAN FRANCISCO.

W. H. GEORGE,

President and Chairman Industrial Relations Committee.

(p. 138.)

The Builders' Exchange, Incorporated July 5, 1890, 180–188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *June 30, 1922.*

Effective at once and to further carry out the resolution adopted by the Central Council of the Builders' Exchange on April 12, 1922, reading as follows:

"At a called meeting of the Central Council of the Builders' Exchange held this 12th day of April, 1922, a quorum being present, it was resolved that the Builders' Exchange, represented by its affiliated crafts, reaffirms its allegiance to the American Plan and the wage award of the Impartial Wage Board for the year 1922, and instructs its Industrial Relations Committee to take the necessary steps to see that the American Plan is properly carried out and that the wage award is properly enforced in all crafts in the City and County of San Francisco for the balance of the year 1922."

It is now necessary to add to the permit system in addition to cement, lime, plaster, ready mixed mortar, common brick, fire and face brick, terra cotta and all clay products,

sand, rock and gravel, wall board, button lath, Keene cement and all plaster products, for the Counties of San Francisco, San Mateo, and Santa Clara, the following articles:

Wire lath and metal lath of all kinds.
Wood lath.

Kindly be governed accordingly and see that you have a permit on hand for all L. C. L. as well as carload deliveries.

Yours very truly,

BUILDERS' EXCHANGE
OF SAN FRANCISCO,
W. H. GEORGE,
President and Chairman,
Industrial Relations Committee.

(p. 139.)

2. Pledges from contractors

Before any contractor was permitted to obtain a permit from the Industrial Relations Committee of the Builders' Exchange, he was required to sign a pledge card, of which the following is a copy (pp. 124–5, Exhibit No. 13):

No. 1.—Date, April 26, 1922. I (underneath) we, hereby state that this job (underneath) shop, will be run on the American Plan in all crafts and pay the wage scale of the Impartial Wage Board. Location: S. E. corner 8th and Howard Street. Kind of work: Concrete building. New factory building. Permit No. 5379–82. (Signed) Cahill Brothers, John R. Cahill. 1,200 barrels gray cement; 1,000 yards rock or gravel; 500 yards sand.

These pledge cards were signed by contractors in the presence of the secretary or some one connected with the department of the Industrial Relations Committee of the Builders' Exchange and when signed were delivered to the Secretary (p. 124). Twelve thousand of these pledge cards in the form of Exhibit No. 13 (p. 124–125) were signed and delivered to the secretary of the Industrial Relations Committee of the Builders' Exchange since April 13, 1922. Not only contractors were required to sign such pledges, but property owners who desired such building permits were required to sign such pledge cards (p. 135). Some of the applicants for permits refused to sign the pledge card and in such cases permits were refused (p. 139).

On June 21, 1922, wall board, button lath, Keene cement, and all plaster products were added to the list for which permits were required (p. 138). On June 30, 1922, wire lath and metal lath of all kinds, and wood lath were added (p. 139). The lath wallboard and Keene's cement were not manufactured within the State of California, but were shipped from other States (pp. 75, 454). The permit system was also extended to cover the counties of San Mateo and Santa Clara.

3. Warnings

In order to carry out the conspiracy and make it more effective, warnings were sent out to contractors that in applying for permits they were required to strictly carry out the American Plan,

and any person receiving a permit and not complying need not apply for any more permits (p. 114). On April 15, 1922, letters were sent out by the Industrial Relations Committee to contractors who were not running on the American Plan in San Francisco from which the following is quoted (pp. 110–111):

> It is called to the attention of the committee that your shop is still running on the Union basis. On receipt of this letter will you correct immediately this situation? *On* common with all other Master Plumbers, *your business must be run on the American Plan.* Will you kindly call up the writer and advise him that this action has been taken?
>
> Yours very truly,
>
> BUILDERS' EXCHANGE
> OF SAN FRANCISCO,
> W. H. GEORGE,
> *President and Chairman,*
> *Industrial Relations Committee.*

On April 13, 1922, a mimeographed letter was sent out to all members of the Builders' Exchange (pp. 111, 112), reading in part as follows:

> You are particularly requested to make sure before applying for a permit that your job is running on the American Plan. All jobs will be regularly inspected, permits will not be again granted to any member or non-member of the Builders' Exchange who secured a permit and then does not run his job on the American Plan and pay strictly the

Builders' Exchange wage scale and no more in any way, shape or form.

Yours very truly,

BUILDERS' EXCHANGE
OF SAN FRANCISCO,
BY COMMITTEE ON INDUSTRIAL RELATIONS,
W. H. GEORGE, *Chairman.*

4. Inspectors—the character and effect of their work

In order more effectively to carry out the purpose of the conspiracy, inspectors were employed by the Industrial Relations Committee of the Builders' Exchange. The inspectors appointed by the Industrial Relations Committee turned in duplicate reports each day after canvassing the various jobs to see that they were operating on the American Plan, to the Secretary of the Committee, of which the following is a copy (p. 135):

> Daily report of shop and of jobs operating. (Report each craft and common laborers, separately.) Contractor: Monohan & Slaven; craft, plumbers; location of shop—job, 745 Ellis Street; signs put up (yes or no) blank; foreman's name, blank; remarks, blank; craft, plumbers; No. union men, blank; wages, blank; number non-union men, 2; wages, $9; union or non-union job, blank; dated May 12. (Signed) A. Hutchinson.

These inspectors were sent out for the purpose of ascertaining and checking up on how many union and non-union men were employed on each job. W. H. George instructed the witness (L. E. Crawford) to refuse a permit to contractors who were not operating under the American Plan (pp. 136, 150).

The effect of the work of inspectors is illustrated by the letter, dated June 29, 1922 (p. 142), quoted at page 16 of this brief.

When the inspector reported a job which was not operated in conformity with the demands of defendants, a letter was sent similar to Exhibit No. 11 (p. 123), of which the following is a copy:

The Builders' Exchange, Incorporated July 5, 1890, 180-188 Jessie Street. Phone, Sutter 6700

SAN FRANCISCO, CAL., *Oct. 5, 1921.*

E. SUGARMAN,

4415 Calif. St., San Francisco, Cal.

DEAR SIR: To-day's inspection report on your job located at 14 Ave. 100 N. of Balboa shows that the following crafts are employed, and the number of union and non-union men employed in each craft:

Crafts, plumbers, non-union 1; union men 1.

In the carrying out of the American Plan the proportion should be nearer 50 per cent of each.

The inspection report also hows that the foreman is a union man. He must be a non-union man. See trade rule No. 12.

Trusting that for the proper carrying out of the American Plan that you will correct this situation at once, we remain

Yours very truly,

BUILDERS' EXCHANGE OF SAN FRANCISCO,

By its CONFERENCE COMMITTEE,

W. H. GEORGE, *Chairman.*

(In the lower left-hand corner, "WHG-s".)

5. Grievance committee, trials and fines of members

James H. Pinkerton was a member of the Grievance Committee of the Builders' Exchange during the year 1922 (p. 213). He was a plumbing and heating contractor. He testified that S. W. Band was charged by the Grievance Committee with violating the rules of the Builders' Exchange. The particular rule, which had been adopted by unanimous vote, was to work on the American Plan. Band violated that rule by hiring only union men. He was fined and expelled for violating that rule (p. 213).

Pinkerton also testified that C. Peterson Company was found guilty of the same offense, was fined and suspended (p. 213). Pinkerton also testified that C. W. Higgins was found guilty of violating the same rule, was fined and suspended (p. 213). He testified that N. George Weinholz was treated in the same way for the same offense

(p. 213). A formal charge was filed against S. W. Band on April 20, 1922, signed by W. H. George, chairman (p. 214). A similar charge against C. Peterson & Company, dated April 12, 1922, was filed (p. 214). Other documentary evidence in connection with the charges and trial before the Grievance Committee are set out at pages 214 to 216, inclusive, of the record.

Gordon Chamberlain became a member of the Builders' Exchange in February, 1917, and continued until May, 1922. At that time he was cited to appear before the Committee of the Builders' Exchange (p. 296). The charges specified that he had been selling building materials without permits. He was fined $250 (p. 296). After that date he was unable to purchase building supplies in San Francisco (p. 297).

The Tacoma & Roche Harbor Lime Company was charged with shipping a car of lime to Mr. Cambiano, secretary of the Building Trades Council of San Jose without a permit. The charges were filed January 16, 1923, and the company was cited to appear before the Grievance Committee on January 25, 1923 (p. 292). The trial did not occur, and the agent of the company, Mr. Reveal, was informed that it would not occur until after the disposition of the case of United States of America *v.* Industrial Association, in the Federal court (p. 314).

The effect of the threatened trial, however, was such that the Tacoma & Roche Harbor Lime Com-

pany refused to sell Gordon Chamberlain any lime. On February 21, 1923, the president of the company sold Chamberlain two hundred and fifty barrels of lime at $1.80 per barrel " net f. o. b. direct at Roche Harbor, Washington." While this lime was shipped and ordered to be delivered to Chamberlain, who was operating under the name of Civic Center Supply Company, the lime was diverted by Reveal, and Chamberlain did not get it (pp. 297, 298).

On May 9, 1923, the president of the Builders' Exchange, W. H. George, wrote a letter relative to the activities of the Grievance Committee, from which we quote the following (p. 306):

> If you are a consumer don't ask your dealer for stuff without getting the permit. If you are a dealer dont' give the consumer any material until he presents you in hand with the permit.
>
> Let's lighten the duties of the Grievance Committee and keep " fine " money in our own pockets.

6. Lists were distributed of jobbers who were not operating under the American Plan, which lists are similar to and in effect are " black lists "

These lists were being used effectively at the time this action was commenced by the Government on May 26, 1923. On August 1, 1923, G. L. Brown, salesman for the Sandusky Cement Company, wrote his company as follows (p. 386):

The following dealers are blacklisted:
Golden Gate Mtl. Co.
Civic Centre Sup. Co.
Gray-Thorning Lbr. Co.

On April 20, 1923, Mr. Schwaab, the salesman for the Sandusky Cement Company, wrote his company a letter in which he used the following language (p. 385):

> I do not see any ground for worry over the subject of permits. The only outlaws are the Civic Center Supply Co., the Gray-Thorning Lumber Co., and the Golden Gate Materials Co.

On May 15, 1923, Mr. Schwaab again wrote his home office at Cleveland, Ohio, from which we quote the following (p. 351):

> I am so sorry you again assume I am not disposed to take the responsibility of handling these *black-listed controversies.* It is simply a point of view and I have no desire or inclination to "pass the buck."
>
> When I received your telegram advising that the Gray, Thorning Lumber Co. wanted our prices, I immediately wired the Exchange to learn if there had been any change in their status. When I learned they are still black-listed, I telegraphed you the information and suggested you quote and request permit.

On July 11, 1923, the Sandusky Cement Company wrote W. H. George, chairman of the Indus-

trial Relations Committee, from which we quote the following (p. 360):

> The writer feels that if you will kindly instruct your office to mail us, each month, a list of the dealers in good standing and immediately upon any dealer being placed on the black list, you so advise us, thus alleviating any possibility of our not working in harmony with your organization.

Mr. George was rather sensitive at this time to the use of the term "black list." The Government had commenced this action. On July 17, 1923, he wrote the sales manager of the Sandusky Cement Company at Cleveland, Ohio, from which we quote the following (pp. 357, 358):

> On the other hand it is not possible to send out a list. In the first place a list as you describe would probably be called a *black list,* as you very fairly named it, and would get us all in trouble, and in the second place in these troublesome times the situation changes so quickly that a list would hardly cover the necessity.

In writing to Mr. W. H. George on November 14, 1922, Mr. Schwab of the Sandusky Cement Company, said (p. 294):

> When I was at the Exchange last I made inquiry as to the *ineligibles* and was informed the Civic Center was the only one and no shipments have gone to them since our talk on the subject.

The idea of black lists had originated in connection with the plumbing supplies. Paul Eliel, a representative of the Industrial Association (p. 157), stated that before May 31, 1922, information from different sources was obtained as to which plumbers were operating on a union basis; that lists were sent out in order that the plumbing supply houses might be advised as to who were operating union shops; the Industrial Association sent out revised lists whenever there was a change. Mr. Eliel prepared these lists from inspectors' reports and other confidential sources (p. 157).

A. W. Middleton, manager of the Richmond Sanitary Manufacturing Company (p. 171) testified that lists similar to Exhibits 22, 23, and 24 (p. 165) were received by his company. These lists were handed to Mr. George Hines with instructions to refer any inquiry from anyone whose name was on the list to the witness, and that the company was in sympathy with the American Plan not to sell anyone who was on a union basis (p. 172). A number of witnesses testified to the conduct of defendants with reference to these lists. Mark E. Henderson talked with Mr. Leary, manager of H. Mueller Manufacturing Company, concerning the lists and was informed that they were lists of plumbing contractors who were supposed not to be operating in accordance with the American Plan; that it would be the policy of the Mueller Company to sell the

contractors who were operating under the American Plan (p. 173).

Mr. Stephen H. McCabe testified that thirty of these lists were received by the Grinnell Company of the Pacific, and it was decided not to solicit any business from any of those mentioned on the list (p. 174).

B. E. Powers testified that there were five different calls from people on the lists who were referred to the office and that the witness did not believe any of them were sold materials (p. 175).

Henry H. Kruger testified that Mr. Hennessey, whose name appeared on the list, applied to purchase material and was refused because his name was on the list (p. 176).

Harry L. Allison testified that he received the lists and gave instructions to employees of the Mark-Lally Company that if any representatives of concerns listed came to purchase goods, they were to be referred to him, and that it was the policy not to sell to those who were not operating under the American Plan (pp. 177–178).

Frank C. McDonald, general president of the State Buildings Trades Council of California, made an affidavit in which he stated that from June 1, 1922, until November 20, 1922, the Industrial Association mailed dealers in plumbing and steam-fitting supplies written lists containing the names of all contractors who were employing labor-union foremen or more than one-half of whose employees

were members of labor unions; that after November 20, 1922, the Industrial Association discontinued the practice of mailing said written lists, but conspired among its members and officers to furnish the names of all building contractors and master plumbers operating contrary to the rules of the Builders Exchange and arranged that the Industrial Relations Committee of the Builders Exchange should not grant any permits for any of the building materials under the permit system to any person who employed any plumbing contractor or Master plumber whose name was not on the new list (pp. 85, 86). Plumbing supplies were almost exclusively manufactured outside the State of California and shipped into the State by rail or water from other States (pp. 86, 454).

Paul Eliel also testified (p. 158):

> The secondary supply houses were placed on the list to prevent plumbers who were operating on the union basis from obtaining supplies through these various secondary houses.

On page 23 of appellants' brief the statement is made:

> The permit system never covered plumbing supplies.

It is enough to say in answer to this contention that the plan of the conspirators was to prevent, and in numerous cases did prevent, anyone who

refused to operate under the American Plan from getting plumbing supplies.

The American Radiator Company refused to sell C. Peterson a steam boiler and some radiators. H. W. Noble, manager for the company, testified that lists similar to Exhibits 22, 23, and 24 (p. 165) were seen by him; that they were opened by the mail clerk and placed on his desk; that he then turned them over to the assistant manager with instructions to confer with him if any of the parties named in the lists should apply for materials, as he wanted to give these applicants special treatment with the idea that before he would refuse any of those named on the lists he would look into it. Peterson's name appeared on these lists (p. 183).

The full significance of the plan is made clear by Exhibit No. 18 (pp. 140, 141) issued by the Industrial Association, which is in effect a " black list ":

Industrial Association of San Francisco, Santa Fe Building.
Address all communications to the association

July 1, 1922.

The Builder's Exchange, 180–188 Jessie Street, San Francisco, Cal.

(Attention of Mr. Crawford)

Gentlemen: We hand you, herewith, list of jobs operating, in accordance with Mr. George's letter to you of June 29, copy of which was forwarded to Mr. Gross.

Sugarman Jobs

Contractor	Location
McCay	1190 Stanyan St.
———	N. E. cor. 3rd Ave. and Irving

Contractor	Location
Higginson	21st Av. 150 ft. north of Clement
———	N. E. Cor. of 3rd Ave. & Irving
Steinauer	N. side of Cal. 50 ft. W. of 10th Ave.
M. T. Johnson	W. side of 14th Ave. bet. B & C
Schwartz	N. side of Cal. bet. Gough & Octavia
Schwartz	McLaren Ave. bet. 29th & 30th
———	232 30th Ave.
A. W. Lawson	N. W. cor. of 2nd and Geary
Sherer	Moss bet. Howard & Folsom
———	232 30th Ave.
A. W. Lawson	N. W. cor. of 2nd & Geary
Sherer	Moss bet. Howard and Folsom
———	S. side of Clement St. near 27th
E. Nelson	S. side of Valencia bet. Army & Duncan
———	N. W. cor. of 1st Ave. & Balboa

Also the following job, which Mullins is doing for Jannesen:

Franklin & Union Streets.

We have the record of Hammerton's job, as below, Gus May, plumbing contractor:

East side of Funston Ave., 200 ft. N. of Fulton

We have the record of the following Hammill jobs; F. Kohler is the plumbing contractor in each instance:

W. side of 16th, 225 ft. N. of Balboa
S. side of Geary, west of 21st Ave.
N. side of Francisco, 87-1/2 E. of Gough

We also hand you list of the following jobs on which Kohler is operating. These have previously been supplied you, but in most instances without precise location.

Contractor	Location
Munson	E. side of Mission, 225 s. of 25th
Warden	S. side of Carmel, 208 E. of Cole
Warden	N. side of Alma, 176 e. of Stanyan
Midbust	N. side of 15th 264 n. of Balboa
Warden	E. side of 29th, 75 to 125 n. of Balboa
Sandberg	Corner 11th & Lake

Contractor	Location
Warden	5060 Mission St.
Warden	N. side of Chestnut, 109 w. of Van Ness
Warden	W. side of 15th Ave., 105 s. of Judah
Warden	W. side of 21st, 170 s. of California
Sandberg	W. side of 12th Ave. 75 ft. N. of Fulton

Also the following jobs on which Gus May is the plumber, most of which have previously been given you without the precise location:

Contractor	Location
Adler	19th Ave. 175 s. of Balboa
Moren	W. side of 12th Ave. bet. I & L
Adler	S. side of Anza 120 ft. E. of 22nd
———	Railroad and Palou Ave.
McLean	W. side of 17th, 275 s. of C.
Gillogley	E. side of Prosper, 91 N. of 17th.
Irvine	W. side of 9th Ave. 200 N. of Fulton
Cohn	W. side of Franklin, 30 S. of Green
Jones	S. W. corner 27th and California
Ellingson	S. E. cor. California & 32nd
Johnson	N. E. cor. 11th and Judah

Very truly yours, Industrial Association of San Francisco. Paul Eliel."

Industrial Association of San Francisco, Santa Fe Building.
Address all communications to the Association

June 17th, 1922.

Builders' Exchange, 180 Jessie Street, San Francisco, Cal.

Attention Mr. Crawford

Gentlemen: Below please find additional list of plumbing jobs, with contractors and locations:

Albert I. Mollis:

East side of 12th Ave., South of Geary
West side of Edinburgh, 300 ft. east Elcelsior
Alteration job—108 Congo St. Sunnyside
N. E. Cor. Church St. near 28th—Alteration job

1009 Divisadero St.
North side Taraval—200 West 34th St.
108 Congo St.

E. Sugarman:

North side California St. bet. Gough & Octavia
McLaren Ave., bet. 29 & 30th Ave. Seacliff
N. E. Cor. 3rd Ave. & Irving St.
24 Leavren Ave.
232 30th Ave.
2nd Ave. & Geary
1190 Stanyan St.
3rd Ave. bet. Lincoln & Irving
N. E. cor. 3rd Ave. & Irving
21st Ave. bet. Clement & Cal.
Santa Paula Ave. St. Francis Wood
S. S. Clement St. near 27th Ave.
California & 10th Ave.
14th Ave. bet. B & C
Moss St. bet. Howard & Folsom
Valencia St. bet. Army & 29th Sts.
1st Ave. & Balboa St.

Very truly yours, Industrial Association of San Francisco.
(Signed Paul Eliel PE. T. (pp. 142–3)

"For Sound Industrial Relation."

Industrial Association of San Francisco, Santa Fe Building.
Address all commun.cations to the Association

June 16, 1922.

The Builders' Exchange, 180 Jessie St., San Francisco, Calif.

(Attention of Mr. Crawford)

Gentlemen: We have the following list of plumbing jobs for which Mark Lally holds the orders. The master plumbers, in all instances, are on the list. You may find one or two duplications below, as compared

with the list which we have already given you. The list follows:

Kohler's Jobs

Location	Owner	Condition of job
17th & B	Simme	Ready to plaster.
W. 12 & N. Fulton	Sonberg	Ready to plaster.
16th & B	Hammill	Ready to plaster.
16th & A	Sonberg	Ready to plaster.
15th & B	Midbust	Ready to pour foundation
W. 21st & Cal	Warden	Ready to plaster.
2nd & Geary	Midbust	Ready to pour foundation.
29th & B	Warden	1 house, ready to plaster. 1 house, foundation only in. 1 house, ready to pour foundation.
27th & Lake	Hammill	Not started.
12th & Lake	Sonberg	Not started.
37th & Geary	Warden	Not started.

The following jobs of Kohler have not yet been inspected. We will inform you of their condition within a day or two.

Location	Owner
W. 21 & Geary	Hammill
W. 15 & Judah	Warden
25th & Mission	Munson
N. S. F. & E. of Gough	Unknown
N. Chestnut & W. Van Ness	Warden

Kohler Jobs (Contd.)

Location	Owner
Camel & Stanyan	Warden
Alma & Stanyan	Warden
5000 Mission St	Warden
Parkside	Warden

Gus May's Jobs

Location	Owner
W./s. 9 av., 200' N. of Fulton	Irvine, Contr.
13th Ave. & Fulton	Unknown
w/s. Franklin Street, South of Green	L. J. Cohn, Contr.
Cor. 28th & Cal. T. M. Jones, Contr	Unknown
Location unknown	Homenga
Location unknown	W. J. Irvine
12th & I	Unknown
Quesado & Newhall	Unknown
17th & Fulton	Unknown
23rd & C	Homenga
Ross Valley	Unknown
15th & Anza (near French)	Unknown
Railroad & Palou	Unknown
5th & Anza	Konig
Upper Terrace	Unknown
19th & C	Adler
E. of 19th & N/s. Fulton, Mollv C	Unknown
Carl & Frederick	Unknown
Church & Helviges	Unknown
Liberty #242 Ellison, Contr	Unknown
11th Ave. & Judah	Unknown
Parkside	Maillard
N. of 17th & E./s. Prosper, Gillogley, Contr.	Unknown
E./s. 32nd & S. of Cal	Hammill
22nd & A	Adler

S. W. Bend Jobs

Location	Owner
N. E. cor. Fulsom & Dora	Unknown
Washington Street E. of Van Ness	Unknown
Haight & Pierce	Anderson

Peterson Company

Location	Owner
Geary & Shannon	Little
East side of Powell N. of Sacramento	Anderson

Turner Company

Pipes and fittings for sprinkling jobs as follows:

Peck & Hillis, Oakland, Watson & Moore job.
Oakland, Albers Bros. Milling.

Very truly yours, Industrial
Association of California
(Signed) Paul Eliel PE/IA"

Similar lists are found at pages 145 to 150 of the record.

These letters of the Industrial Association were to call attention of Mr. Crawford as an employee of the Builders' Exchange to the specific jobs on which the plumbing was not being done on the American Plan (pp. 150–151).

After receiving the letter of W. H. George, dated June 29, 1922 (p. 142), Crawford discontinued permits to E. A. Janssen until he put his plumbing work on the American Plan. Witness issued a permit to Mr. Janssen while Mr. Mullins was still doing his plumbing, as Mr. Mullins adopted the American Plan. Crawford discontinued permits to Thomas Hammill on the particular jobs where May and Kohler were doing the work not according to the American Plan. Crawford held up permits on jobs where Sugarman was the plumber (p. 151). The S. W. Bend jobs mentioned in the letter of June 16, 1922 (p. 145), were included in the list in which S. W. Bend, master plumber, was not conforming to the American Plan (p. 152). Peterson Company were plumbing and steam fitting contractors and were included in the list (p. 145) because they were not operating on the American Plan (p. 152). The Turner Company were plumbers and steam fitters and electricians and at the time of the letter were not operating on the American Plan (p. 152). They were included in the list (p. 145).

The clause in the letter of June 29, 1922 (p. 142),

> please call to my attention any other jobs that should be added to this list which you take from your present records,

meant letters received from the Industrial Association calling the attention of Mr. Crawford to particular jobs. (P. 152.) Crawford would not issue materials (evidently refused to issue permits for materials) to Peterson, Higgins, and Mullins who were not running on the American Plan (p. 152).

7. Letters to Prospective Builders

The Industrial Relations Committee of the Builders Exchange adopted a plan of soliciting prospective builders to employ the American Plan contractors only. An example of this practice is Exhibit No. 10 (p. 122) and reads as follows:

> Builders' Exchange, Incorporated July 5, 1890, 180–188 Jessie Street. Phone, Sutter 6700.
>
> SAN FRANCISCO, CAL., *April 17, 1922.*
>
> CHARLES MURPHY,
>
> *3028 Broderick Street, City.*
>
> DEAR SIR: This committee notes that you have made application for building permit for a 2-story & basement frame (2 flats) at W. 9th Av. 125 N. California.
>
> On behalf of the Builders' Exchange sincerely trust that you will only employ American Plan contractors on this work.
>
> American Plan contractors in every craft you will find as members of the Builders' Exchange affiliated with their own craft.

If you desire a list of American Plan contractors in any of the crafts, we shall be glad to supply same on application.

Yours very truly,

BUILDERS' EXCHANGE OF
SAN FRANCISCO.
W. H. GEORGE,
President and Chairman
Industrial Relations Committee.

The treatment of an owner who did not comply with such request is shown in the affidavit of Ethel Lynn (pp. 66–70). Mrs. Lynn was engaged in a building operation in March, 1923, and employed Chris Salomonsen. He called on H. S. Thompson to buy material. He was refused. He then went to R. O'Connell, who said that he had two trucks idle and plenty of material on hand, but that he could not sell it to Mr. Salomonsen without a permit; that he was checked very closely on the material sold to him, and if he sold it without a permit the wholesale building material dealers would refuse to sell him any more material and would put him out of business. He then went to the Sibley Grading & Teaming Company, from whom he received a letter, of which the following is a copy (p. 70):

[Sibley Grading and Teaming Co., office and yard, 135 Landers Street]

SAN FRANCISCO, 3/19/23.

C. SALOMONSEN, *723 Sanches St.*

DEAR SIR: Before we can deliver any cement-lime or rock on your order for 3668

> 21st St. you will have to get permit from the Builders' Exchange and either bring same to us or have the Exchange mail it to us.
>
> SIBLEY GRADING & TEAMING CO.,
> By C. G. S.

This resulted in a visit of the owner to Mr. Crawford and the asking for a permit for twenty-five barrels of lime. Mr. Crawford said (p. 68):

> I think you are going to have that material carted off and used on some union job. I will give you a permit for 5 barrels of lime. You can take it or leave it.

We find no contradiction of Mrs. Lynn's affidavit by any of the persons named therein.

8. Compelling Breaches of Contracts

The Builders Exchange was so intent upon controlling the entire building situation that they coerced contractors to break contracts with any person not operating under the American Plan and agreed to pay and did pay damages assessable and assessed against the general contract.

G. B. Pasqualetti was engaged in business as a general contractor in San Francisco (p. 312). He commenced a building in the early part of 1922 for G. Rossi & Company, and in March, 1922, entered into a contract with C. Peterson & Company for plumbing. Inspectors representing themselves as agents for the Industrial Association of San Francisco notified Pasqualetti that it would be necessary for him to cancel his contract because

C. Peterson & Company were not operating under the American Plan, and that he would not otherwise be able to obtain building materials for the building. Pasqualetti went to the headquarters of the Industrial Association, where he was requested to cancel his contract with Peterson & Company and advised that the Industrial Association would protect him from all loss if he would cancel said contract. Max Kuhl, attorney for the Association, drew up a contract of indemnity. Pasqualetti then notified Peterson & Company, canceling the contract. He was sued and his property attached. He was represented in the suit by Max Kuhl, according to the agreement of the Industrial Association. The attachment was released by bond furnished by the Industrial Association and the action was compromised by the payment of $1,400, which was paid by the Industrial Association. The Association also paid the attorney's fees. He thereupon made a contract with A. J. Silva, who completed the job. Pasqualetti was a member of the Builders Exchange at the time of making the contract with Peterson & Company (p. 313). Somewhat similar experiences are detailed in the affidavit of W. K. Hughes (pp. 322–323).

C. The direct restraint upon interstate commerce which resulted from the combination between defendants

It was the purpose of the conspiracy to make it impossible for builders in San Francisco to obtain any building materials whether they came from

within or without the State of California without a permit from the Builders' Exchange. The permit system was extended to San Mateo, Santa Clara, Alameda, and Contra Costa Counties, as is evidenced by a general circular issued by the Industrial Relations Committee of the Builders' Exchange, dated December 18, 1922, as follows (p. 283):

> It is with a great deal of pleasure as the old year draws to a close that I thank you on behalf of the San Francisco Builders' Exchange for the cooperation which you have given us in the maintaining of the permit system, the very necessary agency for maintaining the American Plan.
>
> May I remind you at this time that the permit system is still in full effect for the counties of San Francisco, San Mateo, Santa Clara, and Alameda.
>
> That you must insist on having in your office a permit for all deliveries in these counties, made either to dealers or contractors, on the following building materials.
>
> Cement, Lime, Plaster, Ready Mixed Mortar, all plastering materials, wall board, button lath, wire lath and metal lath of all kinds, wood lath, Keene cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

On May 18, 1923, another general circular letter was issued, a copy of which is as follows (p. 286):

[The Builders' Exchange, 180–188 Jessie Street]

SAN FRANCISCO, CAL., *May 18, 1923.*

GEO. P. SCHWAAB, Esq.,

Hotel Stewart, San Francisco, Calif.

GENTLEMEN: As announced to you in President's Letter No. 5, the permit system was found "not guilty" in our Superior Court and is in full force and effect. The purpose of this letter is to remind you that the permit system covers cement, lime, plaster, ready mixed mortar, all plastering materials, wall board, button lath, wire lath, and metal lath of all kinds, wood lath, Keene's cement, sand, rock and gravel, common brick, fire and face brick, terra cotta and all clay products.

Also that it is in effect for the counties of San Francisco, San Mateo, Santa Clara, Alameda, and the city of Richmond.

Manufacturers must require San Francisco Builders' Exchange permits from all dealers to whom they ship in the above-mentioned territories, except that permits issued to dealers for Alameda County and the city of Richmond by the Oakland Builders' Exchange will be satisfactory.

All dealers receiving goods under these dealer permits mentioned above must have on file in their office a permit before they make any deliveries to any consumer or other dealer.

Auditor's checking will be intensified at once, and it will be necessary to prefer charges against anybody not strictly complying with the above instructions.

We earnestly plead with you to cooperate with this committee so that the permit system may become absolutely effective for the carrying out of the American Plan in the building industry, and it is sincerely hoped that it will not be necessary to prefer charges against any one for direliction of duty.

Keep " fine " money in your pocket.

Yours very truly,

(Signed) W. H. GEORGE, *Chairman,*
Industrial Relations Committee.

The counties of San Mateo, Santa Clara, Alameda, and Contra Costa lie south or immediately east of San Francisco.

The defendants proposed to see that no building materials could be obtained by any contractor or builder within the above-mentioned territory who failed or refused to adopt and adhere to the American Plan. The agreement and understanding of the defendants was to extend the permit system so as to prevent building materials of all kinds, destined for the counties of San Francisco, San Mateo, Alameda, Contra Costa, and Santa Clara, from being sold or delivered to any person desiring to use such materials in any building operations, whether in carload or less than carload lots, unless before such sale or delivery a permit was secured and a pledge card signed and filed with the Builders' Exchange of San Francisco.

The defendant William H. George was the leader in the conspiracy. He was the president of the Builders' Exchange and chairman of its Industrial Relations Committee. He was also manager of the Henry Cowell Lime and Cement Company which dealt in the products mentioned in the first permit resolution of April 12, 1922 (pp. 270, 299, 122).

On April 12, 1922, the defendant W. H. George, as chairman of the Industrial Relations Committee of the Builders' Exchange, issued letters containing the following statement (p. 137):

> If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to *all other materials used in the building trades.*
>
> Your whole-hearted cooperation is necessary, will be appreciated, and will soon end the present controversy.

On April 15, 1922, he wrote in part as follows (p. 111):

> It is called to the attention of the committee that your shop is still running on the union basis. On receipt of this letter will you immediately correct this situation? On common with all master plumbers, *your business must be run on the American Plan.*

On June 7, 1922, he issued another letter from which we quote (p. 138):

> Be sure you have on hand a permit for every delivery or *carload shipment.*

On June 30, 1922, he wrote in part as follows (p. 139):

> It is now necessary to add to the permit system * * *. Kindly be governed accordingly and see that you have a permit on hand for all L. C. L. as well as *carload deliveries.*

In both letters, dated June 7 and June 30, 1922, specific attention was called to the necessity for a permit for "carload deliveries." In the last letter, of June 30, wire lath and metal lath of all kinds were added to the list, neither of which were manufactured in the State of California (p. 454).

It is apparent from these communications that the scope of the conspiracy was such that it necessarily affected interstate commerce. In order to illustrate the extent of the conspiracy to prevent any contractor from obtaining building materials from sources of supply wholly outside of the State of California and to prevent anyone except adherents of the American Plan from obtaining such supplies, it is proper to direct attention to the testimony of a number of witnesses who were interfered with in obtaining interstate shipments and to trace the responsibility for such interference to the defendant conspirators. Corroboration of these witnesses by documentary evidence will also be pointed out. For convenience the testimony will be separated according to the material attempted to be purchased, under headings, plaster, cement, lime, and plumbing supplies.

1. Plaster

There were five boss plasterers interested in the Golden Gate Building Materials Company, sometimes referred to in correspondence as the G. G. B. M. Company (p. 460). These plasterers were known as the "Big Five" (pp. 332, 335). The members who constituted this group were Francis O'Reilly, J. E. Connell, McGruer and Simpson, Peter Bradley, and A. Knowles (p. 321). They each had difficulty in carrying on building contracts and purchasing building materials and organized the Golden Gate Building Materials Company for the purpose of purchasing in the best manner possible plaster and other building materials necessary in carrying on their operations in San Francisco (pp. 321–322).

Not more than 1 per cent of the plaster used in building operations in the city and county of San Francisco was produced and made in the State of California. Most of it was manufactured in the States of Nevada, Utah, Montana, and Washington (p. 320.)

A. Knowles was a plastering contractor who had performed contracts on a number of large buildings in San Francisco, including the Golden Gate Theater and Loew's Warfield Theater. While working on these theaters he was notified by William H. George, president of the Builders' Exchange, that he must immediately adopt the American Plan, discharge the union plasterers employed

by him who would not abide by the American Plan; and that if he failed to do so, he could not obtain plaster from any member of the Exchange or the Industrial Association. He was notified by Mr. George that—

> every effort would be used to prevent him from getting plaster in order to carry out said contracts on the aforesaid theaters (p. 321).

He requested that he be allowed to finish the contracts on the theaters with the men then in his employ and pledge himself to abide by the American Plan thereafter. President George refused such request (p. 321).

Montana.—In April, 1922, the Golden Gate Building Materials Company, with which Knowles was identified, ordered plaster from the Three Forks Portland Cement Company, at Hanover, Mont., to be shipped by rail to Portland, Oreg.; thence by ship to San Francisco. Shortly after making an agreement with the Three Forks Portland Cement Company the Golden Gate Building Materials Company was notified by the McCormick Steamship Company of an increase in freight and was advised by Mr. McCormick of the Steamship Company that such increase in rates was necessary for the reason that the Golden Gate Company was not a member of the Builders' Exchange, and that if such steamship company transported said building materials for and to the said Golden Gate Building Materials Company the steamship

company would lose transportation business of certain business concerns who were in sympathy with the enforcement of what is known as the American Plan in San Francisco. Shortly thereafter the Golden Gate Building Materials Company was notified by the Three Forks Portland Cement Company that it could not fill said order (p. 320). Two officials of the McCormick Steamship Company testified for defendants on this subject (p. 463, 468, 469). There is no denial in the record that the Three Forks Portland Cement Company refused to fill said order. (App. brief, pp. 107–108.)

Nevada.—While Knowles was doing the plastering on Loew's and the Golden Gate Theaters in 1922 he placed orders for hard wall cement with the Pacific Portland Cement Company, which had its manufacturing establishment at Mound House, Nev. Orders were on *carload lots* and were delivered to Knowles in carload lots. During the year 1922, after having received several cars of plaster from the Pacific Portland Cement Company, Knowles was notified by the company that another car had arrived but that before delivery of said car of plaster could be made, it would be necessary for Knowles to obtain a permit from the Builders' Exchange of San Francisco. He was notified that because he had not obtained the permit the car of plaster could not and would not be delivered to him. He did not receive that car of plaster, and ever since that time he has been unable to obtain from the Pacific Portland Cement Com-

pany any plaster for use in San Francisco, San Mateo, Santa Clara, and Alameda Counties (p. 311). The Pacific Portland Cement Company refused to sell building material to the Golden Gate Building Materials Company in 1923 (p. 322). This subject matter is discussed in appellants' brief, pages 106, 107.

The assistant secretary of the Pacific Portland Cement Company, Mr. Henry V. Towle, testified that the company manufactures its plaster in its own plant at Mound House, Nev., and (p. 470)—

> the customary way of handling its plaster in San Francisco is for said cement company to ship it from Mound House to itself in the city of San Francisco, where the cars are unloaded and the plaster put in warehouses of said cement company. Only in exceptional cases of an extremely large building is this practice ever departed from and goods shipped direct to a job.

He testified further that during the early part of 1922 various carloads of plaster were shipped from its plant in Nevada to its warehouse in San Francisco, consigned to itself; that from time to time they notified Knowles of the arrival of certain carloads of plaster, and in accordance with this information Knowles from time to time placed certain orders for plaster. At no time has said cement company ever shipped any carloads of plaster from its plant in Nevada to Knowles in San Francisco (p. 470).

The extravagant effort of the defendants to show that interstate commerce was not involved is shown by this testimony. When carloads of plaster were shipped from Nevada to San Francisco for one job, why should the cars be unloaded and the plaster put in warehouses unless for the purpose of raising the technical point that the contents of the cars had been severed from interstate commerce? (App. brief, p. 28.) It is practically admitted in this testimony that certain carloads of plaster went from the plant of the Pacific Portland Cement Company in Nevada, consigned to itself in San Francisco, and without being unloaded were delivered to Knowles. The practice and purpose of the Pacific Portland Cement Company is shown by other witnesses. Gordon Chamberlain, doing business as the "Civic Center Supply Company," was refused plaster because he did not and could not obtain a permit from the Builders Exchange of San Francisco (p. 296). Z. T. Thorning, secretary of the Gray, Thorning Lumber Company, placed an order for one car of Empire plaster with the Pacific Portland Cement Company, and Mr. Knox, manager of the Pacific Portland Cement Company, advised him it was impossible for the company to ship from Nevada to the Gray, Thorning Lumber Company unless the Gray, Thorning Company first obtained from the Builders Exchange a permit. The Gray, Thorning Company did not obtain a permit because it was necessary to subscribe to a pledge that it would sell hardwall plaster only to those

who agreed to support the American Plan or to those who had obtained a permit from the Builders Exchange (p. 317).

N. H. McLean and A. J. Mooney visited the office of the Pacific Portland Cement Company in San Francisco, where they were informed that the company owned the plant at Mound House, Nev.; that Empire plaster was their product, and that the company would sell them plaster provided they had a permit from the Builders Exchange *but under no other circumstances* (p. 76).

Fred Figel, an agent for the Pacific Portland Cement Company, was asked by J. F. Cambiano, on June 27, 1922, to sell him 40 tons of Empire plaster and tendered in payment $1,000. Figel stated that under instructions from the Pacific Portland Cement Company he could not and would not sell any plaster to Cambiano or to any union man or to any person without a permit because and by reason of an understanding and agreement entered into by and between the Industrial Association and his company and other dealers in and manufacturers of plaster. Figel said that he was acting under express orders and directions received by him from the Pacific Portland Cement Company and that he had gone to Watsonville, Calif., and stopped the delivery of a carload of cement sold by the Pacific Portland Cement Company to the Pajaro Valley Mercantile Company and had caused the money which had been paid for the said cement to be returned to the purchaser, and that he had done this

because he had been informed and believed that the said cement was intended for union workers, which was contrary to the agreement and understanding which had been entered into by the Pacific Portland Cement Company with the other building material dealers and manufacturers of cement, plaster, and similar materials (p. 77).

Nevada.—On February 27, 1923, a contract was entered into between the Golden Gate Building Materials Company and the Standard Gypsum Company, which manufactured plaster at Ludwig, Nev., for 500 tons of plaster to be delivered as requested. The contract is found at page 326 of the record. The Standard Gypsum Company delivered 370 tons in accordance with that contract. On June 25, 1923, O. C. Barrymore, sales manager for the Golden Gate Building Materials Company, was informed by President Udahl, of the Standard Gypsum Company, that the company would not finish and fulfill the contract and that it would pay any damages resulting from its failure to fulfill its contract, and gave as a reason for the refusal that dealers in said product in the San Joaquin County would not buy from the Standard Gypsum Company because it was selling to the Golden Gate Building Materials Company, knowing that it was not a member of the Builders Exchange and had no permit for said plaster (p. 327). The application of the Golden Gate Building Materials Company was rejected by the Builders Exchange in May, 1923 (p. 326). It appealed for a permit on

August 15, 1923, and was refused (p. 327). This action was commenced in the United States District Court May 26, 1923. (Discussed in appellants' brief, pp. 105–106.)

Utah.—James A. Gray, a union representative, was connected with the Building Trades Material Supply Company, organized for the purpose of furnishing building materials to contractors and other persons who were unable to obtain hardwall plaster because of the combination between the Builders Exchange and the Industrial Association. In May, 1921, Gray went to Richfield, Utah, to interview W. P. Payne, sr., the manager of the Jumbo Plaster Company, whose plant was at Sigurd, Utah. Payne stated that the output of the plant had formerly been handled in San Francisco by the Henry Cowell Lime & Cement Company, of which W. H. George was manager. Eighteen carloads of plaster were ordered and the money deposited in the Salt Lake City bank to pay for it. Orders were placed in 1922 and funds to cover 4 carloads were placed in the Peterson Bank at Richfield, Utah. Eighteen carloads were shipped during 1921 from the plant in Utah to the Harbor warehouse in San Francisco. As soon as the plaster began to arrive in San Francisco, the Builders Exchange placed all the Jumbo Plaster Company products on the " unfair list " and posted a notice to that effect in the assembly room of the Builders Exchange, and thereafter members of the Builders

Exchange boycotted the Jumbo brand of plaster and refused to purchase any products of the Jumbo Plaster Company (pp. 299–300). On April 20, 1922, Gray wired Payne that he was in need of large quantities of plaster and asked if they could make prompt shipments. On April 21, 1922, he received a reply (p. 300):

> Can fill your orders at $8 per ton f. o. b. Sigurd. Sacks extra. Jumbo Plaster Company.

On April 29, 1922, he received a telegram signed Jumbo Plaster Company, as follows (p. 300):

> Will load car Monday San Jose. Please advise A. Knowles that we can load cars for him Tuesday.

On May 1, 1922, he received a telegram (p. 300):

> We are prepared to make prompt shipment. Send in all orders you can. Jumbo Plaster Company.

On June 29, 1922, Gray telegraphed (p. 300):

> Deposited Tuesday with Petersons Bank eleven hundred and four dollars for another hundred twenty tons plaster. Have you shipped last car of previous order. How soon will you ship on this order. * * *

On July 1, 1922, Gray received the following telegram (p. 300):

> Have not shipped last car on previous order. Can not promise shipment until after fourth.

Gray had an interview with Mr. Payne in San Francisco on July 2 and 3, 1923, during which Payne stated that he could have sold several hundred carloads of plaster in San Francisco, but with the orders that Gray would be able to supply him he was not going to seek any further trade there. Gray received no more plaster from the Jumbo Plaster Company. He wrote Payne and received a reply from him advising Gray to withdraw his funds from the Peterson Bank and that owing to conditions at their plant they would be unable to make any further shipments for some time. Gray learned that Payne had shipped five carloads of plaster to the Cowell Lime & Cement Company, at San Jose, Calif., at about that time (p. 301.) Mr. Payne testified that he had notified Gray that he might draw down his deposit—

> as I could not make deliveries to him (p. 269).

After receiving the order for 20 tons he met W. H. George, president of the Builder's Exchange of San Francisco. It was after he had spoken to Mr. George that the order was turned down (p. 269). Payne testified (p. 272):

> I shipped certain lime or plaster to Gray. There was an order for 20 tons placed with us and the money deposited. Some of that order we did not fill. The reason we did not fill it was because of conditions at the plant. We had three conditions there that put us to the bad. The first one was a flood;

> the second one was our calcine kettle; the third one was that our turbine wheel went back on us. * * * When these conditions were alleviated and our plant was running normally, we made arrangements with the Henry Cowell Lime Company to act as distributors, and having made that arrangement we declined or failed to fill that order because of the new condition of having a distributor here on the ground. * * * I have received a number of letters since July, 1922, requesting that we fill orders or accept orders in and around San Francisco. I have referred them to the Henry Cowell Lime & Cement Company as being our distributors. That is the only reply I have given to any of them.

He testified that the flood damage was cleared up on July 19, 1922, and that he was in San Francisco on June 30 or July 1, saw Mr. Gray and also saw Mr. George. During the month of July he sent 1 car of plaster to Alexander Gray. He said (p. 271):

> It was in that month I told Alexander Gray that he might as well draw down his deposit—that I would not be able to fill his order.

He also said (p. 271):

> In conversation with Mr. George, the permit system of the Builders' Exchange was just merely mentioned. That is a matter I did not enter into and do not care anything about. I do not know in what connection he mentioned it. He merely said they were under a permit condition here.

Utah.—Z. T. Thorning, of the Gray, Thorning Lumber Company, also placed an order for 2 carloads of hard-wall cement with the Jumbo Plaster Company in 1922. These two carloads were shipped from Sigurd, Utah, to the Gray, Thorning Lumber Company at Redwood City, Calif. Mr. W. P. Payne, sr., manager of the Jumbo Plaster Company, refused to accept any further orders because the Gray, Thorning Lumber Company had not obtained a permit from the San Francisco Builders Exchange, but gave as a reason for its refusal a partial destruction of its plant. It did ship 5 cars to the Henry Cowell Lime and Cement Company within six weeks (p. 317). On July 21, 1922, Mr. Payne, manager of the Jumbo Plaster Company, wrote Gray, Thorning Lumber Company, acknowledging receipt of check for $439.60 and placing an order for 40 tons of fibered hard wall, saying also (p. 274):

> date of shipment to you is very indefinite.

On July 21, 1922, the Jumbo Plaster Company gave credit memorandum to Gray, Thorning Lumber Company for $440 (p. 274). On August 4, 1922, the Jumbo Plaster Company wrote Gray, Thorning Lumber Company (p. 274):

> We have your letter of July 31st and assure you we were pleased to receive same but regret to say that owing to the fact that one of our calcining kettles went bad and had to be replaced and owing to the increased Utah and Idaho orders we have on file and

being behind on account of this kettle delay *it will be a long time before we will be able to ship to you.*

On September 27, 1922, the Jumbo Plaster Company advised the Gray, Thorning Lumber Company (p. 275):

> I do not think it would be advisable to depend upon us for any plaster.

With reference to handling its business between Utah and California, Mr. Payne testified (p. 272):

> In shipping our goods to the Henry Cowell Lime & Cement Co., I follow out their instructions whether the goods go to them direct or send it to their customers. Whatever their shipping directions are, we follow them. It is sometimes shipped out direct and sometimes it is shipped to their customers.

2. Cement

Kansas.—The method used by defendants to coerce unwilling dealers and contractors to submit to the will of the conspirators is illustrated by the correspondence between Best Brothers Keene Cement Company of Medicine Lodge, Kans., and the Steffens Lomax Company, its factory representative on the Pacific coast. Before reading this correspondence, however, it is important to read a letter of W. H. George, on the letterhead of the Henry Cowell Lime & Cement Company, dated April 19, 1923, directed to the attention of Mr. Thomas Best (pp. 387–388) in which he says:

I find considerable protest here from our recognized dealers and fear that your tonnage is not going to be well taken care of here if you are going to ship contractors and unrecognized building supply dealers. The recognized dealers feel that it is not fair for you to be shipping contractors like MacGruer & Simpson. In other words, if you want the contractor trade direct how can you expect the recognized dealer trade?

Also in regard to the Golden Gate Building Material Company. I explained to you the situation when you were here that this outfit was the bootlegging outfit for the union plasterers and they are still at the same game, and the recognized dealers are not going to be in favor of handling material which is also handled through this unrecognized outfit who are not members of the Builders' Exchange and who will not be accepted. Of course, MacGruer & Simpson get a big job once in a while, and are only buying from you because at present they can not buy from anybody else.

The correspondence upon this subject is found as follows:

Letter from Thomas Best to the John R. Steffens-Lomax Company, April 26, 1923 (p. 328).

Reply, May 1 ,1923 (pp. 337–338).

Letter of Best to Steffens, May 7, 1923 (p. 330).

Reply, May 18, 1923 (pp. 338–340).

Letter, Best to Steffens, May 22, 1923 (pp. 331–335).

Reply, June 5, 1923 (pp. 340–341).

Letter, Best to Steffens, June 11, 1923 (pp. 335–337).

Reply, June 21, 1923 (pp. 342–343).

This correspondence deals with a form of plaster known as "Keene cement." The Keene Company was dealing with the so-called "Big Five" and the Golden Gate Building Material Company and were shipping large orders to MacGruer & Simpson (pp. 331–332). On May 22, 1913, Mr. Best wrote his agent (p. 331):

> We have shipped today to MacGruer & Simpson their order No. 937 and expect a car any day for loading the second fifty-ton shipment to apply on their order No. 938, balance of orders to be shipped as instructed later. We presume that MacGruer & Simpson or yourselves will give us sufficient notice when needing additional shipments so that we can secure *large capacity cars* in time to enable shipments to be made to take care of their requirements.

He says further (p. 331):

> nor do we understand why it is necessary to obtain permits from the Builders' Exchange for release of building materials as this is something new to us. We would be glad of your further explanation as to why it seems to be the practice in San Francisco before placing orders for building materials to obtain permits or consent from the Builders' Exchange to purchase building materials by members of the Exchange.

In the same letter he says (pp. 333, 334):

> As advised you by previous correspondence, we have had several letters from Mr. W. H. George of the Henry Cowell Lime & Cement Co. commencing with his letter of April 19th raising objections to our selling direct to MacGruer & Simpson and especially to the G. G. B. M. Co., claiming that recognized building supply dealers would not be favorable to the handling of our Keene's cement so long as we continued the practice, and asking us to discontinue making shipments to the concerns in question." * * *
>
> Mr. George in reply to our letter accepting his complaint wrote us on May 2nd that Mr. Cadman had just called him up protesting against the very thing that he had written us about; namely, our selling to MacGruer & Simpson and the G. G. B. M. Co. and again asking us to discontinue furnishing this firm any more material. We replied to Mr. George's letter of May 2nd that we had decided to discontinue shipments to the G. G. B. M. Co. (doing so on advice of your letter of May 1st) but that we would not refuse to accept orders or discontinue shipments to MacGruer & Simpson.
>
> Mr. George wrote us on May 11th in reply to our last communication saying that our decision in regard to the G. G. B. M. Co. was correct and satisfactory but until we would take the same course with MacGruer & Simpson his firm and other dealers in San Francisco would not be favorable to our

> material, further stating that he positively knew that MacGruer & Simpson were not boosters for lime mortar gauged with Keene's cement but are and always have been hard wall plaster advocates.

In commenting upon Mr. George's letter later, Mr. Lomax said (p. 341):

> We are enclosing several letters from the Builders Exchange—from our files—which go rather fully into the matter, all being signed by our friend, Mr. W. H. George, of Henry Cowell Lime & Cement Co. Enthusiasts of Mr. George's caliber have the failing that their enthusiasm sometimes oversteps their adherence to veracity.

He then comments upon the value of Mr. George's assertion that MacGruer & Simpson were not pushing Keene's cement.

The direct effect upon eastern manufacturers of this combination to prevent contractors from getting building materials is illustrated by the following sentence of Mr. Best's letter of May 22, 1923 (p. 335):

> If you can advise us we would be glad to have you do so as to the attitude of some of the principal architects and general building contractors in San Francisco with reference to the open shop or American Plan and whether there would be any danger of antagonizing architects or general building contractors by our selling direct to MacGruer & Simpson of the G. G. B. M. Co. We realize that if our methods of market-

> ing our material in San Francisco were contrary to the opinion of architects and general contractors this might be a disadvantage that we would be placed under, therefore we should be glad if you would enlighten us on this point.

In a letter dated June 11, 1923 (two weeks after the Government commenced this action), to the Steffens-Lomax Company, Mr. Best said (p. 336):

> We are very glad indeed that you have written us so fully with regard to this industrial Relations Committee. We gather from your information that the G. G. B. M. Co. have now been admitted as members in good standing of the Builders' Exchange and that therefore there will be no question as to their being in the same position as other building supply dealers and entitled to buy their materials direct from manufacturers the same as other building supply dealers in your city. If we are right in this opinion we are very glad indeed to hear of the embargo against the G. G. B. M. Co. being removed and we shall be glad to make shipments to them, our doing so not interfering in any manner and being quite regular.
>
> As we now understand the situation in San Francisco, both the G. G. B. M. Co. and MacGruer & Simpson being members of the Builders' Exchange, it is therefore quite in order for us to accept orders from and make shipments to both of these firms and our doing so can not be considered irregular.

Notwithstanding the assumption of Mr. Best, the appeal of the Golden Gate Building Material Company for a permit for cement from the Builders' Exchange of San Francisco on or about August 15, 1923, was refused (p. 327).

Ohio.—The Sandusky Cement Company, with its office in Cleveland, Ohio, and its plants in Ohio, Illinois, and Pennsylvania (p. 295), had a distributing agent on the Pacific coast, namely, George P. Schwaab. Clinton B. Rogers was the general sales manager. Correspondence between W. H. George, Industrial Association of Santa Clara County and George P. Schwaab from October 28, 1922, to November 14, 1922, is as follows:

Telegram from W. H. George to George P. Schwaab, October 28, 1922 (p. 293).

Telegram from Schwaab to George, October 30, 1922 (p. 293).

Letter, dated November 10, 1922, from George to the Industrial Association of Santa Clara County (p. 293).

Letter, dated November 14, 1922, from Schwaab to Mr. George (p. 294).

Letter, dated November 14, 1922, from Edwards, secretary of the Industrial Association of Santa Clara County, to Mr. George (p. 294).

Letter, dated November 15, 1922, from George to Schwaab (pp. 294–295).

This correspondence involved a car of Medusa cement. In a postscript of his letter dated November 10, 1922, Mr. George says (p. 293):

> Since writing the above I find out that this was a car shipped to J. Praeder at Redwood City, and was by him reshipped to San Jose. Can you advise me who J. Praeder of Redwood City is? This is rather important as we don't want a repetition, and I must get after the Sandusky Cement Co. WHG–b.
>
> (Actually shipped without permit to Gray Thorning Co.)

Mr. Schwaab's letter of November 14, 1922, to Mr. George contains the following (p. 294):

> The only shipment we made to Redwood City went to a dealer, the Gray, Thorning Lumber Company.
>
> As you know, we are disposed to give you our heartiest cooperation and our product will not be distributed otherwise with our knowledge or consent. When I was at the Exchange last I made inquiry as to the *ineligibles* and was informed the Civic Center was the only one, and no shipments have gone to them since our talk on the subject. If any others are irregular I have not been advised. You can rest assured it is our desire to assist in every way possible.

The care with which every carload of cement was followed up by the Builders Exchange is shown in telegrams and letters between the Sandusky Cement Company, George P. Schwaab, and the salesmen's reports (pp. 345–348). These show that the Gray, Thorning Lumber Company of Redwood City bought white Medusa cement on August 30, 1922; telegram ordering it was sent September 1,

1922 (pp. 345, 346); that another car was sold November 28, 1922, upon the salesman's report, of which Mr. Schwaab made the following statement (p. 348):

> This concern shipped a car of "Medusa" to the unions at San Jose in violation of the Exchange rulings. They now have a car of our cement en route and I have Mr. Gray's promise that he will not disturb any further.
>
> This concern is not in sympathy with the permit system and are considered "bootleggers." Please do not accept any more business from them without consulting me.

The Gray, Thorning Lumber Company was located at Redwood City, in San Mateo County, which is south of San Francisco and within the territory covered by the permit system.

On July 25, 1922, W. H. George, as chairman of the Industrial Relations Committee of the Builders Exchange, had written the Sandusky Cement Company as follows (p. 379):

> SANDUSKY CEMENT CO.,
> *c/o Geo. P. Schwaab, Stewart Hotel,*
> *San Francisco, Calif.:*
>
> JULY 25, 1922.
>
> GENTLEMEN: I want to take this opportunity to thank you as a building material dealer of this city for the faithful way in which you have observed the permit system for the counties of San Francisco, San Mateo, and Santa Clara.
>
> It is very encouraging to be able to advise you that the Industrial Association of Santa

Clara County advises today that the union warehouse at this time is empty of materials and that union contractors are fast coming over to the American Plan.

Also to advise you that in this city bootlegging has almost entirely ceased.

May I again at this time ask you to redouble your efforts at this particular moment to see that a permit is exacted for every delivery, *carloads or less than carloads?* I feel sure that the closest adherence to this matter at this time for a short time longer will entirely clean up the situation.

Thanking you for your continued cooperation, remain

Yours very truly,

W. H. GEORGE,
Chairman Industrial Relations Committee.
WHG–b.

The purpose of the conspiracy, so far as it affected the shipment of cement by the Sandusky Cement Company from Ohio to California, is disclosed by the affidavit of Clinton B. Rogers and documents attached to that affidavit (pp. 343–387, inclusive), covering a period of time from April 9, 1922 (p. 374), to September 11, 1923 (p. 370). It was made clear to G. L. Brown, the salesman of the Sandusky Cement Company, in an interview with Mr. W. H. George, chairman of the Industrial Relations Committee, that the following dealers were blacklisted (p. 386):

Golden Gate Building Materials Company.
Civic Center Supply Company.
Gray, Thorning Lumber Company.

The letter of salesman Schwaab to the sales manager at Cleveland, Ohio, dated April 20, 1923, also made this clear (pp. 384–385):

> I note your remarks regarding the Permit System in the San Francisco Bay District. As far as I know, I have had all the Exchange circulars and have made it a point to forward copies to our office promptly.
>
> I am attaching one dated August 4, 1922, copy of which was mailed our Cleveland office. You will note the system is in effect in the counties of San Francisco, San Mateo, Santa Clara, and Alameda.
>
> I do not see any ground for worry over the subject of permits. The only outlaws are the Civic Center Supply Co., the Gray-Thorning Lumber Co., and the Golden Gate Materials Co.

The letter of August 4, 1922, referred to above, was sent by W. H. George as chairman of the Industrial Relations Committee, to the Sandusky Cement Company at Cleveland, Ohio, in which he stated (p. 380):

> please be sure that you have on hand a permit for every delivery, either carload or less than carload and to either dealer or consumer.

Considerable telegraphing was necessary in reference to shipments of carloads of cement to the Gray, Thorning Lumber Company in May, 1923 (pp. 372, 373). The result is shown in the telegram of May 11, 1923, from Schwaab to the cement company at Cleveland, as follows (p. 373):

> I informed Gray we would not ship without permit. The Exchange will not issue any to them at present. Do not ship. It is my understanding you desire to cooperate with Exchange. If so, only action we can take.

The regular course of business between the Sandusky Cement Company and the Gray, Thorning Lumber Company is illustrated by the letter of August 30, 1922, wherein the Sandusky Cement Company quoted the Gray, Thorning Lumber Company, Redwood City, Calif., on Medusa Products delivered f. o. b. cars, Redwood City, Calif. (p. 367). The effect of the conspiracy is shown by the letter from the company to its sales representative in San Francisco, dated May 11, 1923, in which it is stated (p. 363):

> we understand that the Gray, Thorning Company are classed by the San Francisco Builders' Exchange as "bootleggers"; therefore, instructions have been issued in this office not to quote them, ship them, or have anything to do with them without specific instructions from you.

In order to show more clearly the interstate character of the business between this company and its customers in California, we quote from the same letter dated July 11, 1923 (p. 360) as follows:

> You realize, of course, that the Sandusky Cement Company markets its products direct to the various dealers in the State of California. Our competitor's product is han-

> dled through a jobber or on a jobbing basis in San Francisco. It is, therefore, unnecessary for that manufacturer direct to secure permits. This difference in the method of marketing places us in a somewhat handicapped position.

The purpose of the conspirators was exactly the same after suit was brought, as evidenced by the foregoing letter of July 11, 1923, as it was before, when on May 8, 1923, the Sandusky Cement Company telegraphed its California agent (p. 361):

> This office will not request permit. Suggest you phone Gray Thorning price requesting the accompany order if placed with permit. Do not promise immediate shipment.

The dispute growing out of the effort of the Gray, Thorning Lumber Company to purchase Medusa white cement from the Sandusky Cement Company in May, 1923, is clearly evidenced by the letter of May 11, 1923 (pp. 363–365), May 15, 1923 (p. 351), and May 23, 1923 (p. 352).

Note the very frank comment from the California salesman, Schwaab, on May 15, 1923 (p. 351).

The Civic Center Supply Company, through Gordon Chamberlain, ordered 200 barrels of white Medusa Cement from the Sandusky Cement Company in September, 1922 (p. 295). He was a member of the Builders Exchange until May, 1922, when charges were preferred against him for selling without permits and he was fined $250 (p.

296). On September 19, 1922, he received the following letter, which is self-explanatory (p. 296):

[Sandusky Cement Company, 626 Engineers Building, Cleveland, Ohio]

SEPTEMBER 19TH, 1922.

The CIVIC CENTER SUPPLY CO.,
San Francisco, Calif.

GENTLEMEN: Referring to your recent telegram requesting us to ship you 200 barrels of Medusa white cement, wish to advise that we are unable to make shipment of this order for reasons with which you are no doubt familiar.

Trusting it may be possible for us to take care of your business at some future date, we beg to remain

Yours very truly,
THE SANDUSKY
CEMENT COMPANY,
(Signed) C. B. KAYSER.
CBK: S.

The Sandusky Cement case is discussed in Appellants' brief, pages 102–104.

J. F. Cambiano, secretary of the Building Trades Council of Santa Clara County, purchased 2 carloads of cement from Thomas W. Simmons on May 22, 1922. Cambiano met Simmons in the Palace Hotel in San Francisco (p. 47). Simmons stated that on the preceding Friday he had been in San Jose (in Santa Clara County) to meet Max Kuhl; that he there met Samuel Tompkins and two other officials of the Industrial Association of Santa Clara County; that Tompkins acted under

advice of Max Kuhl, that he must notify Simmons that he must secure the return of the two carloads of cement sold to Cambiano. Cambiano, however, refused to return the cement (p. 48). Simmons stated that he had been advised that his business would be ruined if he continued to carry on any business relations with union-labor people in Santa Clara County; that he had been told by several customers that they could not deal with him if he continued in these relations; that he had been informed that his present banking facilities would be curtailed and stopped; that if he would refrain from obtaining any more cement for the unions and would cancel this order, certain business and financial associations in San Francisco would restore him to their favor and reestablish him in their business confidence.

3. Lime

Washington State.—The Tacoma and Roche Harbor Lime Company was ordered to appear before the grievance committee of the Builders' Exchange on January 25, 1923, for trial. It was charged with shipping a carload of lime to Mr. Cambiano at San Jose without a permit (p. 292). The effect of the trial is shown by the fact that in February, 1923, Gordon Chamberlain, operating under the name of the Civic Center Supply Company, tried to purchase lime from the Tacoma and Roche Harbor Lime Company. On February 21, 1923, the president of the company sold the Civic

Center Supply Company 250 barrels of lime, and instructed its agent, Mr. Reveal, to deliver this lime to the Civic Center Supply Company (p. 297). However, Mr. Reveal, instead of obeying the directions of his principal, took the lime off the boat, loaded it onto cars to be shipped out of town. When the Civic Center Supply Company asked Mr. Reveal for the lime, he said that he could not ship it; that if he did so it would mean that he would lose the sale of 2,500 or 3,000 barrels of lime to members of the Exchange who were in a position to buy lime from him under the permit system, and that under the circumstances existing at that time he could not let them have the lime (p. 298). In this connection it is interesting to read the affidavit of Mr. W. C. Reveal (pp. 466–467) attempting to give some excuse for the failure to obey his principal in reference to the delivery of this lime, as well as his affidavit at pages 313, 314.

Evidently Mr. Reveal was informed by Alex Mennie that his trial under the charges would not occur until after the disposition of the action of the United States of America against the Industrial Association of San Francisco et al. in the Federal Court (p. 314.) Part of Mr. George's affidavit on page 455 refers to the same matter. This subject is discussed in appellant's brief at pages 109, 110.

Z. T. Thorning, acting for the Gray, Thorning Lumber Company, was also refused lime by this

company, acting through its San Francisco representative, W. C. Reveal (p. 317).

Victoria, British Columbia.—The Golden Gate Building Materials Company purchased 1,500 barrels of lime through W. K. Hughes, a broker, to be manufactured and sent from the Perie Lime Syndicate, Victoria, British Columbia, in October, 1922. Thereafter Hughes advised A. Knowles, acting for the Golden Gate Building Materials Company, that he could not have the lime supplied to that company on account of the opposition of the Industrial Association of San Francisco (p. 321). This lime was to be shipped from a place near Victoria, British Columbia, by boat, consigned to the Golden Gate Building Materials Company, and to be delivered direct to said company in the city of San Francisco. After making the sale, Leon Levy and Paul I. Fagan, representing the Industrial Association of San Francisco, advised the broker Hughes that they desired to purchase his contract. He refused to sell it without the consent of the Golden Gate Building Materials Company. Upon earnest solicitation of the broker, the Golden Gate Building Materials Company released him from the contract. He suffered a loss and made demand upon Reveal for payment of his commission. Max Kuhl, attorney for the Industrial Association, sent him a check for $240, his commission at 16 cents per barrel on said 1,500 barrels of lime (p. 323). The check was inclosed in a letter, signed "M. J. K.," on the letterhead of the In-

dustrial Association of San Francisco, addressed to W. K. Hughes and Company, under date of November 2, 1922 (p. 324). In the regular course of business the same company, Perie Lime Syndicate, had shipped the Golden Gate Building Materials Company 100 barrels of lime on August 3, 1922, the sale having been made through the same broker. The transaction of August 3, 1922, showed interstate commerce uninterrupted; the transaction of October, 1922, showed interstate commerce interrupted by the defendant conspirators. The record does not support the following statement in appellants' brief at page 108:

> This testimony shows conclusively that the request for the cancellation originated with the Golden Gate Company itself, which, prior to the date of shipment, had embraced the American Plan.

The Golden Gate Building Materials Company did not embrace the American Plan prior to October, 1922, and was being refused permits by the Builders Exchange as late as August, 1923 (p. 327).

Vancouver, British Columbia.—Mr. Horton, of the Portland Lime and Cement Company, which produces lime at Blubber Bay, Vancouver, British Columbia, refused lime to the Gray, Thorning Lumber Company (p. 317).

4. Plumbing Supplies

Various exhibits as to the plumbing situation will be found at pages 16, 37, 38, 40 to 46 of this

brief. On May 31, 1922, conferences were held between the Industrial Association and the plumbing supply houses engaged entirely or almost entirely in interstate commerce, in which it was determined to black list the bad plumbers (pp. 84, 85, 157). About November 20, 1922, the practice of mailing black lists to dealers in plumbing and steam-fitting supplies was discontinued. In lieu thereof, the Industrial Association furnished to the Industrial Relations Committee of the Builders' Exchange the names of all plumbing contractors and master plumbers operating contrary to the rules and the name of the builder, contractor, and all persons employed by such contractor, and the names of owners of buildings, and it was agreed that the Industrial Relations Committee *should not grant any permit* to such persons (pp. 85, 86). California agents and managers of branch offices of the large companies manufacturing plumbing supplies who were located in Illinois, Rhode Island, Pennsylvania, Michigan, and other States kept the home offices of such company fully advised as to the success of the "open shop" fight (p. 89). Practically all plumbing and steam-fitting supplies of every kind, character, and description are manufactured outside the State of California and shiped into California from other States (p. 86). On April 15, 1922, W. H. George wrote (p. 111):

> In common with all other master plumbers, your business must be run on the

> American Plan. Will you kindly call up the writer and advise him that this action has been taken?

Many witnesses testified that they were unable to purchase plumbing supplies because of the agreement between the defendants to refuse to sell unless the purchaser complied with the demands of defendants.

Mark A. Henderson was told by T. F. Leary that it would be the policy of the H. Mueller Manufacturing Company to sell to the contractors who were operating under the American Plan. Certain lists of plumbing contractors who were supposed not to be operating in accordance with the American Plan were furnished Mr. Henderson. The supplies sold in San Francisco came from its factory located at Decatur, Ill. (p. 173). A. W. Middleton, manager of the Richmond Sanitary Manufacturing Company, stated that he understood that the general purpose was to endeavor to put San Francisco on the American Plan basis and he therefore was not in favor of selling to people whose names were on the lists above mentioned (p. 172). Twenty-five or thirty of such lists were received through the mail similar to People's Exhibits 22, 23, and 24 (p. 165). A few of its items were manufactured in San Francisco; others obtained from California and the East (pp. 171, 172).

B. E. Powers, store manager for the Wolverine Brass Works, stated there were five different calls

from people on the lists which were referred to the office, and he did not believe any of them were sold material. He testified that materials sold by that company were obtained principally by shipments from the East (p. 174, 175).

Henry H. Kruger, employed by the Charles F. Hause Manufacturing Company, whose home office is at Omaha, Nebr., saw the lists marked "People's Exhibits 22, 23, 24," and stated that a Mr. Henessey, whose name appeared on the list, applied to purchase materials, but was refused. He was refused because his name was on the list (pp. 175, 176).

Lewis L. Durkee, assistant manager for the Mark-Lally Company, stated the purpose of placing names of certain dealers in plumbing supplies on the list dated April, 1922 (No. 25), was to secure cooperation in not selling certain dealers. The company would not sell to one whose name was on the list. The company obtained its merchandise principally from eastern manufacturers (pp. 176, 177).

H. W. Noble, manager of the American Radiator Company, testified that the company did not have any plants in California. Lists similar to People's Exhibits 22, 23, and 24, were seen by the witness. Mr. C. Peterson came in to purchase a certain boiler and some radiators, but the company would not sell him. Mr. Noble felt that it was not the right thing to sell him under the circumstances, as he was running a closed shop. Mr. Peterson was engaged

in the business of plumbing and heating contractor (p. 183).

F. S. Dunn, representing Crane & Company, of Chicago, Ill., whose supplies were mostly imported from the East, stated that after receiving the aforesaid lists the only person whose name appeared thereon who applied to Crane Company to purchase goods was A. Lettisch. Lettisch also applied to purchase supplies from the office, when Dunn told him he could not deliver any more fittings to him; that he would have to take the matter up with the manager. Prior to receipt of the lists, Lettisch had dealt with Crane Company, and had been sold plumbers' supplies (p. 185). The lists referred to are found on pages 142 to 149, 156 to 158.

S. Green, employed by E. Sugarman, was told when trying to buy plumbers' supplies of the Wolverine Brass Works:

> Sugarman can't get anything; he is on the black list.

When asked by the clerk if he was in the employ of Sugarman and Green answered that he was, the clerk said (p. 196):

> You can't have that plunger if you pay a thousand dollars for it.

S. W. Band was expelled by the grievance committee and fined. C. Peterson Company was suspended from the Builders' Exchange and fined. C. W. Higgins was found guilty, suspended and fined. George N. Weinholz received like treatment (p. 213).

Chris Peterson, a plumber and steam-fitting contractor, belonged to the Builders' Exchange and testified (pp. 277, 278):

> Whenever we have an exceptionally large job and we have plenty of time to wait for the material, we place a carload order in order to get the advantage of the price. We place it with a local jobber. Sometimes we get this carload material out of his stock, and sometimes we get it from the East. * * * If we have ample time to wait for the material, he will place it in the East; in due time we are notified that the carload has been shipped, together with his invoice and bill of lading. We are notified by the railroad company or by the steamship company that the cars have arrived and we go down after them. They are unloaded down here and we take them from the wharf or from the car; either one or the other. After we take the material away we put it into our stock. * * * When we get a carload lot we ship that directly from the East. * * * I get materials sometimes from a boat or a ship. * * * It comes from the East and is shipped through the Panama Canal.

He said:

> I was a member of the Builders' Exchange once. I don't know whether I am a member now. I sent in my resignation, but I don't know whether it has been accepted.

Antone Lettisch testified to his difficulty in securing plumbing materials (pp. 197–199).

The plan was in force not to issue permits for any building material until it was known that the plumbing contractor would support the American Plan. If the plumbing contractor was not satisfactory, none of the articles on the permit list could be purchased; and if none of the articles on the permit lists could be purchased, then necessarily the plumbing supplies can not be purchased.

A list of the large plumbing companies who had representatives in San Francisco and who were members of the Industrial Association are shown on pages 159 and 160 of the record, in a letter issued by Paul Eliel, acting for the Industrial Association of San Francisco. These companies were cognizant of conditions in San Francisco, and most of their representatives attended the meeting of May 31, 1922.

The Builders' Exchange and the Industrial Association arrogated to themselves complete control over building materials in the four counties nearest San Francisco and sought by every means in their power to prevent interstate and foreign shipments of building materials from coming into that territory. Their aim was to completely monopolize the supply of all such building materials and to prevent anyone not cooperating with them in maintaining the American Plan from getting the supplies with which to carry on building operations in that territory.

ARGUMENT

An examination of the decree entered in the court below will disclose that only attempts by defendants to interfere with interstate and foreign commerce are covered by the decree. The particular part of the decree necessary to be considered is as follows (p. 38):

> That the said defendants and each of them, and their members, officers, agents, servants, and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, be and hereby are perpetually enjoined, restrained, and prohibited, directly and indirectly, individually and collectively, from—
>
> (*a*) Requiring any permit for the purchase, sale, or use of building materials or supplies produced without the State of California and coming into said State of California in interstate or foreign commerce.
>
> (*b*) Making as a condition for the issuance of any permit for the purchase, sale, or use of building materials or supplies any regulations that will interfere with the free movement of building materials, plumbers' or other supplies produced without said State of California.
>
> (*c*) Attempting to prevent or discourage any person without said State of California from shipping building materials or other supplies to any person whatsoever within said State of California.
>
> (*d*) Aiding, abetting, or assisting, directly or indirectly, individually or collectively,

others to do any or all of the matters or things herein set forth.

Nothing in the form of the decree seeks to prevent the doing of any act which does not affect interstate commerce.

During the years 1922 and 1923 the defendants engaged in a concerted effort to force all builders in the territory surrounding San Francisco to adopt and carry out the so-called American Plan. The Builders Exchange, the Industrial Association of San Francisco, and all the members of both organizations, including individuals and corporations both within and without the State of California who cooperated with them, determined that no builder or employer who did not maintain the so-called American Plan should obtain the necessary building materials to proceed with his work.

The American Plan as originally outlined (People's Exhibit No. 8, p. 112) contemplated that the foreman on every job must be a non-union man (Trade Rule No. 12, p. 136) and that the proportion of non-union men employed in each craft upon each job should be substantially fifty per cent. This is claimed to have been modified later so that no specific percentage of non-union men in any craft was required upon any job.

An industrial conflict between the " open shop " and the " closed shop " was in progress. The great weapon of the employers who joined the conspiracy commenced by the defendants was the control of

supplies of building materials. It is frankly stated on page 15 of Appellants' brief:

> The employees had ammunition, their right to refuse to work. The employers, on the other hand, had ammunition. In this case the ammunition was building materials.

This weapon was used to force every builder and employer in and about San Francisco to adopt and carry out the plan determined upon by defendants. There was no choice left to a contractor or a builder as to how he should run his job or treat those employed by him. If he desired to operate a union job, he did so at the peril of being unable to get building materials to do his work. If the plan and purpose of defendants succeeded, he would get no materials. The means by which the defendants used the weapon of potential control of building materials were:

1. Permit system.
2. Exaction of pledges from contractors to adopt the American Plan.
3. Refusal to grant permits to any one who would not pledge himself to adopt and carry out the American Plan.
4. Trials before the grievance committee of the Builders Exchange of those who violated their pledge or who did not carry out the American Plan.
5. Fines for violations of rules in selling building materials.
6. Black lists.
7. Inspectors reports.

The record leaves no doubt as to the purpose of defendants to unite under their control all materials on hand or which would be shipped into the specified territory, whether from within or without the State of California, into one great powerful and effective weapon, by the use of which they might compel all contractors and builders in and about San Francisco to adopt the American Plan. The position of the Government upon the law of this case may be stated in the following language:

Every employer has the right to employ his men upon whatever terms may be mutually satisfactory. He may operate a "closed shop" or an "open shop," as he sees fit. He may make either membership or non-membership in a union a condition of employment. This right may not be taken away by any group of men, combining to prevent him from employing union men only if he desires to do so. Where a combination exists which dictates the terms and conditions of employment, it is unlawful. If such a combination directly restrains interstate commerce, it violates the Sherman Anti-trust Law.

The questions presented do not require the citation of numerous authorities and the scope of the argument here presented will be confined to those which seem controlling.

I

The object sought to be accomplished by the defendants was unlawful

It was the purpose of defendants in this case to take away from employers the right to employ men

upon any other terms than those of the so-called American Plan. Every employer who joined the combination stripped himself for the time being of the right to run his job upon such terms as he pleased.

The constitutional right of an employer to dispense with the services of an employee because of his membership in a labor union was recognized by this court in *Adair* v. *United States*, 208 U. S. 161, where an Act of Congress was held to be an arbitrary interference with the liberty of contract which no government could legally justify in a free land.

This case was followed in the case of *Coppage* v. *State of Kansas*, 236 U. S. 1, where a State statue was held to interfere with the same constitutional right of an employer. In the latter case it was distinctly stated, at page 20, that there can not be one rule of liberty for the labor organization and its members and a different and more restrictive rule for employers.

The court expressly limited its consideration to agreements made voluntarily and without coercion or duress and which had no reference to interference with the rights of third parties or the general public (p. 20).

In the case of *Hitchman Coal & Coke Company* v. *Mitchell*, 245 U. S. 229, 250, it was held that the plaintiff was acting within its lawful rights in employing its men only on terms of continuing

non-membership in the United Mine Workers of America, and that both employers and employees have an interest which is entitled to the protection of the law in the freedom of the former to exercise without interference or compulsion his judgment as to whom he shall employ.

The present is just such a case where the defendants joined in a combination to compel third persons and strangers to submit to certain limitations in their employment of labor. The elements of combination and coercion are both present. Such a combination is, however, not *per se* actionable by the Government under any Federal statute, and the fact that the defendants objected to a " closed shop " in building operations in San Francisco is only an incident in this case. It happened to be the reason for the attempt of defendants to restrain interstate commerce and the cause of the restraint thereby effected. But wholly outside of the desire of these defendants to have " open shop " conditions prevail in the building industry, their conduct in combining to obstruct the free flow of plaster, lime, lath, cement and other supplies in the usual channels of interstate commerce made the decree against them proper and necessary.

II

The means employed by the defendants to accomplish their object directly restrained interstate commerce

The effect of the combined trade controlled by the defendants was a threat to manufacturers

of building materials outside of the State of California which was intended to and which did in fact restrain those manufacturers from shipping building materials to " black listed " (p. 386) dealers and contractors and " ineligibles " (p. 294).

Nor was the cooperation of contractors in adopting the American Plan voluntary. They were forced to adopt that plan with reference to contracting with employees under penalty of not obtaining permits and not obtaining building material. They were required to sign pledges of allegiance to the conspiracy. Twelve thousand pledge cards were signed by contractors and delivered to the secretary of the Builders Exchange between April 13, 1922, and May 26, 1923 (p. 135). By these pledges contractors agreed that their jobs would be run on the American Plan (p. 124). No permits for building materials could be obtained unless the contractor signed a pledge card (p. 136). A contractor who had signed the pledge card but who did not strictly carry out the American Plan was warned that anyone not complying with the pledge need not apply for any more permits (p. 114). Those who failed to comply with the pledge were hailed before the grievance committee and fined (pp. 213 to 216).

That such an agreement as the one between defendants in this case is one in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

It was necessary and proper for the District Court to enjoin all acts which might result in such a restraint. The real contention of appellants in this case is that the defendants did not intend to restrain interstate commerce and that their acts did not involve any unreasonable and undue restraint of such trade or commerce. That contention presents a question of fact, the solution of which must be arrived at by a consideration of the evidence, to the most important parts of which we have attempted to direct the court's attention at pages 50 to 91 of this brief, wherein reference is made to the particular acts of defendants and to the pages of the record where evidence of such acts may be found. The principle, however, is clearly established that any combination which seeks to compel third persons and strangers not to engage in a course of trade except upon conditions which the members of the combination impose is an agreement in restraint of trade within the meaning of the Sherman Antitrust Act.

Gompers v. *Buck's Stove & Range Co.*, 221 U. S. 418, 438.

Loewe v. *Lawlor*, 208 U. S. 274.

Eastern States Retail Lumber Dealers Assn. v. *United States*, 234 U. S. 600, 611.

Montague v. *Lowry*, 193 U. S. 38, 47.

Duplex Co. v. *Deering*, 254 U. S. 443, 465, 466.

The case of *Loewe* v. *Lawlor,* 208 U. S. 274, established the unlawful character of an agreement between two or more persons who refuse to buy the product of a manufacturer who runs an "open shop" because such an agreement is a restraint of trade within the meaning of the Sherman Act.

So the agreement in this case between the defendants not to sell material to a builder or contractor operating a "closed shop" is unlawful for the same reason and is within the condemnation of the Sherman Anti-trust Act because it directly restrains interstate commerce.

This case involves the application on behalf of union labor of exactly the same principles announced by this court in the case of *Loewe* v. *Lawlor,* 208 U. S. 274 and 235 U. S. 522.

If it was proper for the courts to declare illegal a combination among members of trades unions to prevent non-union made hats from being distributed among members of unions and their sympathizers, it is just as important to prevent a combination among employers to prevent building materials from being procured by the employers of union labor. The Danbury hatters proposed to exercise their constitutional right to operate a non-union shop and they were protected against an illegal combination formed for the purpose of coercing them into abandoning that right. The Five Big Plasterers in San Francisco were threatened with the impossibility of obtaining plaster if they operated a "closed shop" or re-

fused to operate their jobs on the American Plan. The only difference in principle between the two cases was that in the Hatters' case the controversy arose between private parties under section 7 of the Act of July 2, 1890, whereas in the present case the Government is invoking section 4 of the same Act. The defendants in *Loewe* v. *Lawlor*, 208 U. S. 274, 305, were engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization to be part and parcel of a combination known as the United Hatters of North America.

In the case at bar the defendants are engaged in a combination, scheme, and effort to force all employers in the building trades in and about San Francisco, against their will and their previous policy of carrying on their business, to carry out the American Plan (pp. 112, 113, 114). In *Loewe* v. *Lawlor, supra,* the defendants intended to control the employment of labor by requiring that employers should run "closed shops." In the present case the defendants intended to control the employment of labor by requiring employers to operate "open shops." In both cases control of the channels of sale and distribution of commodities in interstate commerce was the direct means used to accomplish the primary object.

In the case of *Duplex Company* v. *Deering*, 254 U. S. 443, Mr. Justice Pitney, at page 462 of the opinion, said:

> These presses are sold throughout the United States and in foreign countries; and, as they are especially designed for the production of daily papers, there is a large market for them in and about the City of New York. They are delivered there in the ordinary course of interstate commerce, the handling, hauling, and installation work at destination being done by employees of the purchaser under the supervision of a specially skilled machinist supplied by complainant. The acts complained of and sought to be restrained have nothing to do with the conduct or management of the factory in Michigan, but solely with the installation and operation of the presses by complainant's customers.

At page 465 he says:

> Unrestrained access to the channels of interstate commerce is necessary for the successful conduct of the business.

At page 467, in commenting upon the cases of *Lawlor* v. *Loewe*, 235 U. S. 522, and *Eastern States Retail Lumber Dealers' Association*, he said:

> It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or con-

> spiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute.

The injunctive relief granted by the court below was not broader than that approved by this court in *Duplex Company* v. *Deering, supra.*

That the combination among defendants caused a restraint upon interstate commerce in building materials within the meaning of the Anti-trust Law is demonstrated by a consideration of the facts in the *Eastern States Retail Lumber Dealers Association* v. *United States,* 234 U. S. 600. In that case retail dealers in lumber proposed to impose as a condition of carrying on trade that wholesalers should not sell in such manner that a local retail dealer might regard such sale as an infringement of his exclusive right to trade, upon pain of the wholesaler being reported as an unfair dealer to a large number of other retail dealers associated with the offended dealer, the purpose being to keep the wholesaler from dealing not only with the particular dealer who reports him but with all others of the class who may be informed of his delinquency.

In that case the conspiracy was dominated by the purpose to keep the commodity—lumber—within a channel of trade prescribed by the conspirators. In the instant case the conspiracy is to prevent building materials being distributed in the natural course so that it shall be distributed only in a channel fixed and controlled by the conspirators.

In the *Eastern States Lumber Association case, supra,* Mr. Justice Day, at page 612 of the opinion, said:

> The circulation of these reports not only tends to directly restrain the freedom of commerce by preventing the listed dealers from entering into competition with retailers, as was held by the District Court, but it directly tends to prevent other retailers who have no personal grievance against him and with whom he might trade from so doing, they being deterred solely because of the influence of the report circulated among the members of the associations. In other words, the trade of the wholesaler with strangers was directly affected, not because of any supposed wrong which he had done to them, but because of the grievance of a member of one of the associations, who had reported a wrong to himself, which grievance when brought to the attention of others it was hoped would deter them from dealing with the offending party. This practice takes the case out of those normal and usual agreements in aid of trade and commerce which may be found not to be within the act and puts it within the prohibited class of undue and unreasonable restraints, such as was the particular subject of condemnation in *Loewe* v. *Lawlor, supra.*
>
> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control

> the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe Co.* v. *U. S.*, 175 U. S. 211, 241, 242.

On page 614 he says:

> A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade. "But," as was said by Mr. Justice Lurton, speaking for the court in *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 440, "when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed."
>
> When the retailer goes beyond his personal right, and, conspiring and combining with others of like purpose, seeks to obstruct the free course of interstate trade and commerce and to unduly suppress competition by placing obnoxious wholesale dealers under the coercive influence of a condemna-

> tory report circulated among others, actual or possible customers of the offenders, he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress, and the District Court was right in so holding.

The very circulation of information among the manufacturers of plaster, lime, cement, and plumbing materials located in States other than California of the names of contractors and builders or dealers who were not operating upon the American Plan or who refused to pledge themselves to operate upon that Plan, was intended to have the natural effect of causing such manufacturers to withhold sales and shipments from the concerns so listed. In *Eastern States Retail Lumber Dealers' Association* v. *United States, supra,* at page 609, Mr. Justice Day said:

> It was and is conceded by defendants and the Court below found that the circulation of this information would have a natural tendency to cause retailers receiving these reports to withold patronage from listed concerns. That was of course the very object of the defendants in circulating them.
>
> In other words, the circulation of such information among the hundreds of retailers as to the alleged delinquency of a wholesaler with one of their number had and was intended to have the natural effect of causing such retailers to withold their patronage from the concern listed.

The decisions of this court in *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, and *Loewe* v. *Lawlor*, 208 U. S. 274, were applied to the facts in the *Eastern States Lumber Association* case in the following language (pp. 610, 611):

> And in *Loewe* v. *Lawlor, supra,* this court held that a combination to boycott the hats of a manufacturer and deter dealers from buying them in order to coerce the manufacturer to a particular course of action with reference to labor organizations, the effect of the combination being to compel third parties and strangers not to engage in a course of trade except upon conditions which the combination imposed, was within the Sherman Act. In *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, after citing *Loewe* v. *Lawlor, supra,* this court said (p. 438):
>
> "But the principle announced by the court was general. It [the Sherman Act] covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital, or unlawful combinations of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words, or printed matter."

In the case of *Montague* v. *Lowry,* 193 U. S. 38, Mr. Justice Peckham, at page 47, said:

> The plaintiffs, however, could not, by virtue of any agreement contained in such association, be legally put under obligation to become members in order to enable them to transact their business, as they had theretofore done and to purchase tiles as they had been accustomed to do before the association was formed.

In that case the commodity dealt in was unset tiles. There was an association among dealers in San Francisco to shut out non-members from purchasing tiles. The amount of business done amounted to only one per cent of the business of dealers in tiles in that city. The express object of the Association was to unite therein all dealers in San Francisco and vicinity. On page 45 of the opinion, Mr. Justice Peckham said:

> It is not the simple case of manufacturers of an article of commerce between the several states refusing to sell certain other persons. The agreement is between manufacturers and dealers belonging to an association in which the dealers agree not to purchase from manufacturers not members of the association and not to sell unset tiles to anyone not a member of the association for less than list prices.

It was held that the whole thing was so bound together that when looked at as a whole the sale of unset tiles ceased to be a mere transaction in

the State of California and became a part of a purpose which, when carried out, amounted to and was a contract or combination in restraint of interstate trade or commerce.

The obstruction and restraint of a scheme or plan like that of the defendants in this case was illustrated in the case of *Grenada Lumber Company* v. *Mississippi*, 217 U. S. 433, which did not involve a question of interstate commerce at all. The combination among retail dealers in lumber, sash, and doors was held illegal under a statute of the State of Mississippi. The case came to this court upon the claim that the Mississippi anti-trust statute, as construed by the Supreme Court of Mississippi, was in conflict with the Fourteenth Amendment to the Constitution of the United States, because it abridged the freedom of contract. Mr. Justice Lurton, at page 440 of the opinion, said:

> That any one of the persons engaged in the retail lumber business might have made a fixed rule of conduct not to buy his stock from a producer or wholesaler who should sell to consumers in competition with himself, is plain. No law which would infringe his freedom of contract in that particular would stand. But when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many

> acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed. (*Callan* v. *Wilson*, 127 U. S. 555, 556.)
>
> For the purpose of suppressing this competition they have not stopped with an individual obligation to refrain from dealing with one who sells within his own circle, and thereby deprives him of a possible customer, but have agreed not to deal with any one who makes sales to consumers, which sales might have been made by any one of the seventy-seven independent members of the association. Thus they have stripped themselves of all freedom of contract in order to compel those against whom they have conbined to elect between their combined trade and that of consumers. That such an agreement is one in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

In the case of *Federal Trade Commission* v. *Raymond Co.*, 263 U. S. 565, Mr. Justice Sanford, at page 573 of the opinion, said:

> A different case would of course be presented if the Raymond Company had combined and agreed with other wholesale dealers that none would trade with any manufacturer who sold to other wholesale dealers competing with themselves, or to retail dealers competing with their customers. An

act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed. *Grenada Lumber Co.* v. *Mississippi, supra,* p. 440; *Eastern States Lumber Assn.* v. *United States, supra,* p. 614. See also *Binderup* v. *Pathe Exchange, ante,* 291.

The real gist of the conspiracy in this case was the use of force to coerce manufacturers outside of the State of California to withhold the materials manufactured by them from anyone within the State of California who did not submit to the will of the conspirators. The power of defendants is shown by a stipulation in the record (p. 279) that 90 per cent of the new building work in San Francisco was being done by members of the defendant, the Builders' Exchange. At a meeting between representatives of the Industrial Association and the plumbers' supply houses, held May 31, 1922, representatives of the important manufacturers of plumbing supplies were present (pp. 154, 155, 157). Between April 28, 1922, and November 23, 1922, a plumbing contractor who refused to adopt the American Plan was refused plumbing supplies by each one of the firms represented at that meeting except P. E. O'Hair & Company (p. 61). These plumbing supplies were manufactured outside the State and shipped into the State (pp. 86, 454).

Under the decisions above cited, it was enough if the natural tendency of the acts done by the defendants was to cause manufacturers from without the State of California to withhold shipments from builders and contractors who refused to operate upon the American Plan. The vice of defendants' plan was in preventing building materials being distributed in the natural course of trade. The defendants had no right to keep building materials out of the general channels of commerce and to attempt to direct that they should be distributed only in a channel controlled by them. The conspiracy was to keep commodities within certain channels, to wit, among sympathizers with the American Plan. Any contractor desiring to operate a union shop in San Francisco had the right to obtain his building materials in the natural course of trade without obstruction on the part of the defendants. The defendants violated the law when they joined in a conspiracy to prevent him from obtaining materials from outside the State except on a pledge to conform to their wishes and to operate upon the American Plan. The restraint occasioned by unlawful contracts, trusts, pooling arrangements, black lists, boycotts, coercion, threats, intimidation, whether effective in whole or in part, was unlawful. (*Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, 438.)

III

The restraint on interstate commerce was material

It was impossible for the Government to institute an investigation which would cover all manufacturers outside of the State of California who were solicited to and did cooperate with defendants in withholding materials from contractors employing union labor in and about the city of San Francisco. That such investigations are not complete is due to the magnitude of the commerce involved. Enough information was obtained to justify the belief that the defendants were interfering with interstate commerce, and enough evidence was introduced to show the purpose of the defendants and the general nature of their conduct and its effect in restraining interstate commerce.

The contention is made (App. Brief, p. 17) that cement, lime, plaster, etc., were materials produced in California with a few inconsiderable exceptions. The evidence shows that not more than one per cent of the plaster used in San Francisco was produced in California. Most of it was manufactured in the States of Montana, Nevada, Utah, and Washington (p. 320). We have shown the shipments of carload lots of cement and lime from Washington, British Columbia, Kansas, and Ohio. Mr. George himself stated that the very reason lumber, steel, hardware, paints, plumbing supplies, lath, wall board, and glass were not put under the permit system was to avoid the possibility of interfering in any way with

interstate commerce (p. 454). But lath, wall board, and Keene cement were put under the permit system in June, 1922 (pp. 138, 139).

It is admitted that these articles were manufactured and shipped from other States to California (p. 454).

The interference of defendants in the shipment of carload lots where the shipments went directly from the manufacturer to the consumer leaves no room for the contention that the materials covered by the permit system which were produced outside the State of California were in warehouses in San Francisco at the time and that no permits were required for any material except that produced in the State of California or which had been finally separated from interstate commerce. (App. Brief, pp. 27, 28, 29.) Illustrations of the sources of supply of such materials interfered with by defendants are referred to as follows:

Carload lots of cement manufactured in Ohio by the Sandusky Cement Company (pp. 379, 380).

Carload lots of cement manufactured in Kansas and shipped by Best Brothers Keene Cement Company (pp. 387–399).

Carload lots of lime from the State of Washington, shipped by the Tacoma & Roche Harbor Lime Company (pp. 292–298).

Carload lots of lime shipped from Victoria, British Columbia, by the Perie Lime Syndicate (pp. 321, 323, 324).

Carload lots of plaster shipped from Montana by the Three Forks Portland Cement Company (p. 320).

Carload lots of plaster shipped from Nevada by the Pacific Portland Cement Company (pp. 76, 311, 317.)

Carload lots of plaster shipped from Nevada by the Standard Gypsum Company (p. 327).

Carload lots of plaster shipped from Utah by the Jumbo Plaster Company (pp. 269, 272, 274, 301, 317).

It is claimed in Appellants' brief that the choice of material was made for the specific purpose of preventing any question arising as to interference with interstate commerce. (App. Brief, p. 17.) The defendants did not long adhere to that purpose. In fact, Mr. George, leader of the conspiracy, on April 12, 1922, expressly stated (p. 137.):

> If necessary, and as soon as the proper arrangements can be made, the permit system will be extended to all other materials used in the building trades.

Any arrangement between defendants to prevent contractors and builders in San Francisco who desire to employ union labor from obtaining building materials manufactured outside the State of California would violate the Sherman Anti-trust Law.

The defendants would have no motive to agree among themselves to withhold from such contractors and builders plaster or other articles manufactured within the State of California if the con-

tractors and builders could obtain an adequate supply from without the State. In applying the permit system to plaster, only one per cent of which was manufactured within the State, and to metal lath and wall board, almost all of which was manufactured outside the State, the purpose to directly and unduly restrain interstate commerce was manifested. The purpose which dominated the defendants was to drive out of business any employer who refused to abandon the "closed shop." No one can tell how far the conspirators would go in such a conflict. It is enough to know that they were using an unlawful weapon, the absolute control of certain building materials necessary in the construction of every building. If they could control the supply of any essential material, their object could be accomplished. No building could proceed far without cement, lime, and plaster. If any builder could not obtain these materials from manufacturers within the State of California, he would necessarily look to sources of supply outside the State. If he could get neither, he could not proceed far with any building.

In determining whether interstate commerce is involved in this case it is not necessary to consider the decisions of this court in *United States* v. *E. C. Knight Company,* 156 U. S. 1; *Hopkins* v. *United States,* 171 U. S. 578; *Anderson* v. *United States,* 171 U. S. 604. The distinction between those cases and one like the present case was pointed out in the opinion of *Montague* v. *Lowry,* 193 U. S. 38, at

page 48, and in *Stafford* v. *Wallace,* 258 U. S. 495, at page 524. Nor is it important to consider cases like *Coe* v. *Errol,* 116 U. S. 517; *Kidd* v. *Pearson,* 128 U. S. 1; *Leisy* v. *Hardin,* 135 U. S. 100, 116, and other decisions which draw the line where interstate commerce commences and where it ends.

Mr. Justice Sutherland, in *Binderup* v. *Pathe Exchange,* 263 U. S. 291, at page 311 of the opinion, calls attention to the fact that the cases upholding state taxation as not constituting an interference with interstate commerce, are of little value in determining what constitutes a cause of action under the Anti-trust Act. He said:

> It does not follow that because a thing is subject to state taxation it is also immune from federal regulation under the Commerce Clause.

The cases of *United Mine Workers of America* v. *Coronado Coal Company,* 259 U. S. 344, and *United Leatherworkers International Union* v. *Herket & Meisel Trunk Company,* 265 U. S. 457, are both distinguishable from the instant case by the fact that the restraints involved in such cases related to the prevention of manufacture as distinguished from interference with the distribution of commodities after they had been manufactured. The instant case does not involve any effort on the part of defendants to prevent the manufacture of building materials. If the conspiracy among the defendants affects interstate commerce at all, it affects the transportation and

distribution of building materials and not their manufacture or production.

The appellants' brief, on pp. 47–57, discusses in considerable detail *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, and *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, and insists with great earnestness that the facts in those cases are similar to those in the present case, and that the decisions determine the issues now presented. The facts in the present case are, however, fundamentally different from those in the *Coronado* and the *Herkert & Meisel* cases, but the general principles stated by the court in both decisions strongly support the Government's contentions in the present case.

The opinions in both the *Coronado* and *Herkert & Meisel* cases emphasize the principle that the mining of coal and the making of goods are not in themselves commerce and that the fact that those commodities are to be afterwards shipped in interstate commerce does not make their production a part thereof, and that therefore obstructions to mining or manufacturing are not in themselves direct restraints of interstate commerce, although of course they may affect it indirectly by reducing the amount of the commodities to be carried in that commerce.

The facts in the present case would only be similar to those in the *Coronado* and *Herbert & Meisel* cases if the defendants had attempted to interfere with the production of building materials, and if

such interference had caused a diminution in the amount of such materials carried in interestate commerce. The record, however, does not contain any evidence of such facts. It might be assumed that the appellants consider the situation at the other end of the interstate commerce—i. e., at the place of final consumption or utilization rather than of manufacture or production—makes the facts in this case similar to those in the other cases, but such a contention could only be sound, if ever, if the defendants had obstructed the final consumption or utilization of the building materials—i. e., had obstructed by picketing, persuasion, or any comparable means, the actual construction of buildings after the contractors had without hindrance secured the necessary materials. Here again, however, the record does not contain any evidence of such facts. What the defendants actually did in this case was to control directly through the permit system the transportation of building materials from other States into California and their sale and distribution to dealers and building contractors.

The opinions in both the *Coronado* and *Herkert & Meisel* cases further emphasize the principle that obstructions to the mining of coal or the making of goods are illegal, although indirect, restraints of interstate commerce, if the obstructions are intended to restrain commerce in the commodities or have necessarily such a direct, material, and substantial effect to restrain it that the intent reason-

ably must be inferred. In the *Herkert & Meisel* case the court stated (p. 471):

> This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. *It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price, or discriminate as between its would-be purchasers that the unlawful interference with its manufacture can be said directly to burden interstate commerce.*

Even, therefore, if the facts in the present case were similar to those in the *Coronado* and *Herkert & Meisel* cases and even if the obstruction to interstate commerce were indirect and not direct, as it has heretofore been shown to be, the result achieved by the defendants would come directly within the condemnation of the paragraph quoted, as that result was the discrimination between would-be purchasers of building materials caused by the permit system and the black lists.

In attempting to compare the facts in the present case with those in the *Coronado* and *Herkert & Meisel* cases and to distinguish them from those in *Loewe* v. *Lawlor* and *Duplex Co.* v. *Deering* the appellants necessarily at time confuse motive with intent. The motive and primary object in

each case was the same, to enforce certain conditions of employment, and the only respect in which the present case differs is that here the employers are the coercers instead of the coerced, the defendants instead of the plaintiffs. The real distinction between the two sets of cases, *Loewe* v. *Lawlor* and *Duplex Co.* v. *Deering* on the one hand and the *Coronado* and *Herkert & Meisel* cases on the other hand, is that in the first two cases the means selected to accomplish the primary object happened to be a direct attack on interstate commerce, whereas in the other two cases the means selected to accomplish the same primary object happened to be local violence and intimidation which stopped production and thereby indirectly affected interstate commerce by slightly reducing its volume. The present case clearly belongs in the same classification as *Loewe* v. *Lawlor* and *Duplex Co.* v. *Deering* because both of the directness and of the character of the restraint imposed.

IV

Defenses examined

1. That interstate commerce is directly affected has already been discussed.

2. The claim that acts of individuals were beyond the plan or agreement of defendants can not be maintained.

It is claimed that some of the defendants acted as individuals (p. 27, Appellants' Brief) and that

certain defendants did not participate in any acts complained of (Appellants' Brief, pp. 17, 80).

Those of the defendants who became members of the Industrial Association of San Francisco and the Builders Exchange and who received the bulletins and letters sent out by W. H. George, the leader of this conspiracy, are bound by his acts and declarations. There is no evidence in the record that any of the defendants withdrew from membership in the Industrial Association or the Builders Exchange after the commencement of this action in the District Court of the United States.

The rule of evidence is stated by Mr. Justice Pitney in *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, at page 249, as follows:

> The rule of evidence is commonly applied in criminal cases, but is of general operation; indeed, it originated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them.

The principle there announced makes the members of the combination equally responsible for the acts of those who were selected as common agents.

The Bethlehem Ship Building Corporation adopted the answer of the Industrial Association of San Francisco as its answer (p. 25) and it is bound by all the admissions made by that association in its answer. There is no denial by the Bethlehem Corporation in any of the pleadings of its membership in the association.

The only place in the record to which we can call attention to the attitude of the Builders' Exchange of San Jose is a resolution adopted at a meeting held in February, 1922, where it was resolved (p. 27)—

> that from that time forward said Builders' Exchange, and its members, would employ such artisans and workmen in the building trades, regardless of whether such artisans or workmen were, or were not, affiliated with any Labor Union, and that its members would not sell building material to any person who discriminated against non-union artisans and workmen by refusing to employ any artisan or workman unless he was a member of the Labor Union.

The Grinnell Company is connected with the conspiracy by the act of F. H. Maynard, with offices at 1 Liberty Street, New York. On May 20, 1922, John Coefield, president of the United Association of Plumbers and Steamfitters of United States and Canada, notified Maynard by telegram that the Grinnell Company of the Pacific, Inc., was refusing to sell and was not selling and intended to continue to refuse to sell any supplies whatsoever

to any persons more than one-half of whose employees are members of labor unions or whose foreman is a member of a labor union. Maynard replied by telegram that he would investigate and let Coefield know the result of his investigation, but Maynard made no further reply (p. 57). Coefield called upon Maynard on June 20, 1922, at his office and Maynard told Coefield that he had learned that it would be impossible for the Grinnell Company of the Pacific to operate or do business in and around the city and county of San Francisco unless it continued to refuse to sell any supplies whatsoever to any persons more than one-half of whose employees were members of labor unions. Maynard then said to Coefield that the Grinnell Company, Inc., would back up the Grinnell Company of the Pacific in its stand to discriminate against union labor and in refusing to sell. Coefield testified that he had several other conversations, the last of which occurred in February, 1923 (pp. 57, 58). There is no claim that the Grinnell Company of the Pacific was not cooperating with the defendants.

As to the other seven defendants mentioned on page 90 of Appellants' brief, it is conceded that they were members of the Industrial Association or Builders' Exchange, or both. From the official publications, bulletins, and letters sent out by W. H. George to the members of this Association, it is inconceivable that the defendants did not know the purposes and general plan of operation of these

associations. (*Lawlor* v. *Loewe,* 235 U. S. 522, 536.)

3. The contention that the alleged acts affecting interstate commerce were of comparative unimportance (App. Brief, pp. 17, 99) is not material to the decision in this case. It was decided in *Montague* v. *Lowry,* 193 U. S. 38, at page 46:

> Again, it is contended the sale of unset tiles is so small in San Francisco as to be a negligible quantity; that it does not amount to one per cent of the business of the dealers in tiles in that city. The amount of trade in the commodity is not very material, but even though such dealing heretofore has been small, it would probably largely increase when those who formerly purchased tiles from the manufacturers are shut out by reason of the association and their non-membership therein from purchasing their tiles from those manufacturers, and are compelled to purchase them from the San Francisco dealers. Either the extent of the trade in unset tiles would increase between the members of the association and outsiders, or else the latter would have to go out of business, because unable to longer compete with their rivals who were members. In either event, the combination, if carried out, directly effects a restraint of interstate commerce.

4. It is no justification that the situation required defensive measures.

The alleged unlawful conduct of the members of the unions, set forth at pages 10 to 13, and 27 of Ap-

pellants brief, furnishes no justification for the unlawful conduct of the defendants.

In the case of *Grenada Lumber Company* v. *Mississippi*, 217 U. S. 433, at page 441, Mr. Justice Lurton said:

> But the plaintiffs in error say that the action which they have taken is purely defensive, and that they can not maintain themselves as independent dealers supplying the consumer if the producers or wholesalers from whom they buy may not be prevented from competing with them for the direct trade of the consumer.
>
> For the purpose of suppressing this competition they have not stopped with an individual obligation to refrain from dealing with one who sells within his own circle, and thereby deprives him of a possible customer, but have agreed not to deal with any one who makes sales to consumers, which sales might have been made by any one of the seventy-seven independent members of the association. Thus they have stripped themselves of all freedom of contract in order to compel those against whom they have combined to elect between their combined trade and that of consumers. That such an agreement is one in restraint of trade is undeniable, whatever the motive or necessity which has induced the compact.

5. It is claimed that the volume of interstate commerce was not lessened (App. Brief, p. 28) but that during the period in question there was increased activity in building trade and commerce

in San Francisco. The figures seeking to prove this are found on page 26 of the Appellants' brief, showing the number and value of building permits in the city of San Francisco during the years 1920 to 1923, inclusive. It is claimed that the increase was the result of the activities of these defendants. (App. Brief, p. 26.)

The increase, however, in building operations in San Francisco was not due to the establishment of the American Plan. The building operations in the United States, as shown by the report of the Department of Commerce entitled, "Statistical Abstract of the United States, 1923," at page 353, shows the total authorized building in one hundred and thirty identical cities during the same years to be:

1920	$1,342,630,686
1921	1,602,232,041
1922	2,427,734,079
1923	2,959,051,393

The actual increases for each of the one hundred and thirty cities is shown at pages 353 to 355 of that report, where the figures in Appellants' brief for San Francisco are found.

That the court may take judicial notice of these general conditions is indicated in the decision in the case of *The Chastleton Corporation et al.* v. *A. Leftwich Sinclair et al.*, 264 U. S. 543, 538.

6. The intent and motive of the conspirators is immaterial because the restraint of interstate commerce was direct.

It is claimed that if the object of the defendants was not the direct restraint of interstate commerce, there can be no restraint within the meaning of the Anti-trust Act (App. brief, pp. 52–57).

In *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, at page 409, Mr. Chief Justice Taft distinguishes that case from the facts in the cases of *Loewe* v. *Lawlor, Eastern States Retail Lumber Dealers Assn.* v. *United States* and *United States* v. *Patten*.

The conspirators must be held to have intended the necessary and direct consequences of their acts.

United States v. *Patten*, 226 U. S. 525–543;

United States v. *Reading Co.*, 226 U. S. 324, 370.

CONCLUSION

The case for the Government does not rest upon any attempt to justify or excuse any acts of labor unions or their members which are claimed to have been unfair or unlawful.

A number of cases involving union labor and alleged unlawful conduct on the part of those endeavoring to force employers to operate a "closed shop" have been before this court.

The case now presented is based upon the fundamental proposition that employers may not be compelled to surrender their constitutional right to make any lawful contract with their employees with respect to membership or non-membership in a union by a concerted effort to control building materials coming into a State from outside sources.

There may not be one rule of liberty for employers and their sympathizers and a different and more restrictive rule for labor organizations and those acting in sympathy with them. If, in the industrial conflict in progress in San Francisco in 1922, the labor unions did anything unlawful, that is no excuse for the employers banding themselves together in a conspiracy to use unlawful means which must be condemned under the Federal Anti-trust Laws. *The conspiracy between defendants to prevent employers who refused to adopt the American Plan from obtaining building materials tended to and did restrain interstate trade and commerce.*

Every contractor in San Francisco had the right to obtain any building materials he might need from sources outside the State of California without interference from the defendants. Any restraints produced by peaceable persuasions are as much within the prohibition of the law as those accomplished by force or threats of force. The combination among the defendants is clearly illegal so far as it attempted to enforce its demands by interfering with the usual distribution of commodities in interstate commerce. No group of men in any State have a right to combine to prevent contractors from securing necessary supplies of building materials ordinarily brought into the State in the course of interstate commerce and sold as an incident thereof.

The decree entered in the court below is not broader than the Federal anti-trust statutes. It goes no further than the decree approved by this court in *Duplex Company* v. *Deering*, 254 U. S. 443–478, and it should be affirmed.

February 26, 1925.

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